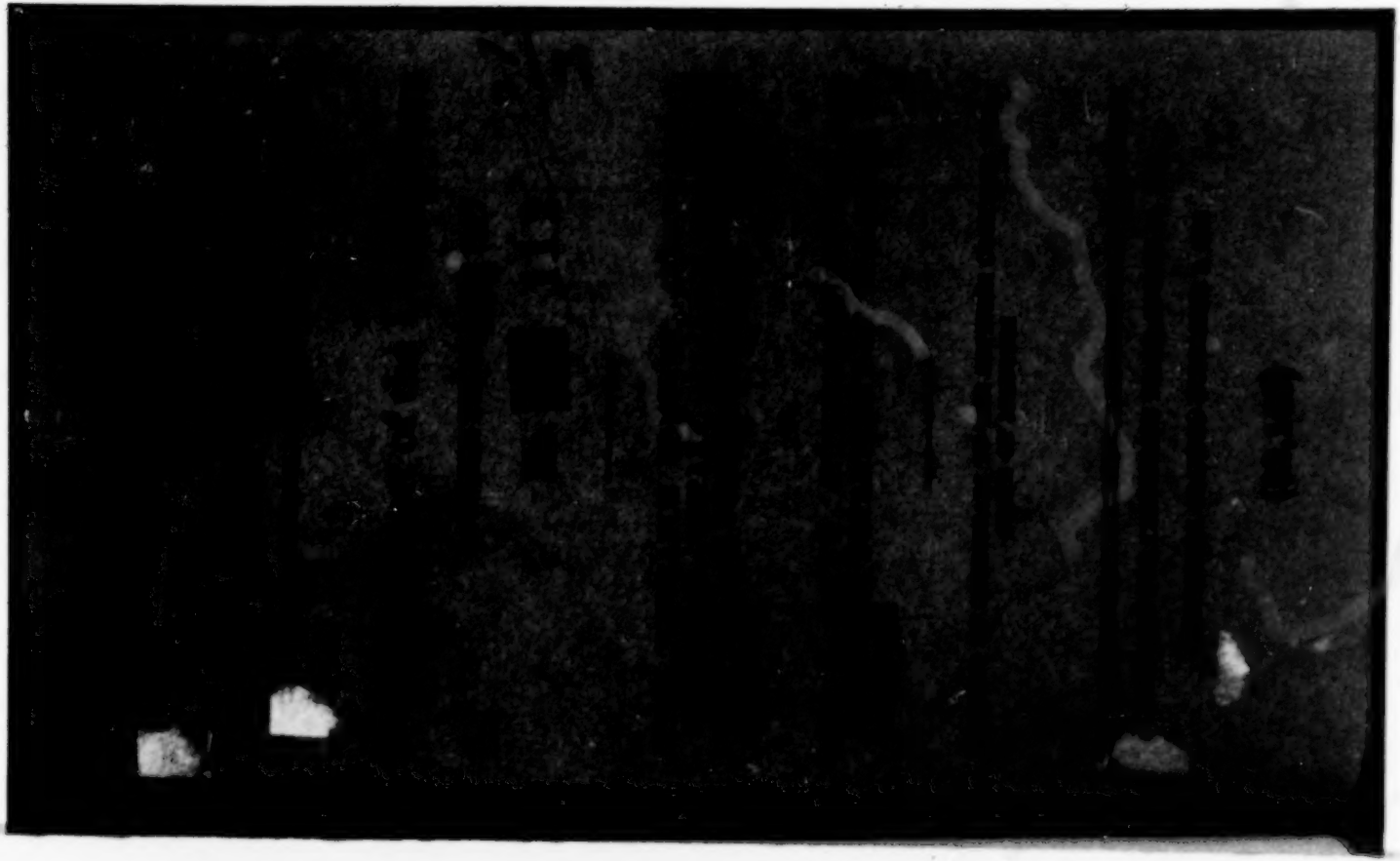

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No.

ÆTNA INSURANCE COMPANY, AGRICULTURAL INSURANCE COMPANY, ALLIANCE INSURANCE COMPANY OF PHILADELPHIA, ET AL., PETITIONERS,

vs.

BEN C. HYDE, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

VOLUME III

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Q. Therefore the state got an advantage of the $42,000 in that period which you had paid for the business prior to that time, did it not?

A. That is what I don't see.

Q. Well, you had $100,000 at the beginning of 1917, unearned premium?

A. Yes, sir.

Q. All the expenses paid prior to that time?

A. Yes, sir.

Q. So the state from '17 to '21 was not charged for any of that expense?

A. No. That had already been charged.

Q. All right. Now, then, at the end of the time you had a million dollars in unearned premiums which you paid $420,000 to get?

A. Yes, sir.

[fol. 2034] Q. Therefore you do charge from '17 to '21 that $420,000, do you, expenses?

A. Yes, on the acquisition of business.

Q. And those premiums will not be earned until after 1921, will they?

A. No.

Q. Therefore you are charging the state for the period of '17 to '21 for all the expenses of doing your business for several years in the future, aren't you?

A. No, we are not charging the state for doing business in the future. We have charged the expenses for acquiring the business; we are carrying that business on the books until expiration.

Q. And all the expenses have been paid in 1921 for the million dollars of unearned premiums?

A. Yes, sir.

Q. And you charge the state with that $420,000 for that million dollars' worth of unearned premiums?

A. Yes, sir.

Q. And those premiums will not be earned until the years go by?

A. Exactly.

Q. So the state is paying, from '17 to '21, all the expenses for these premiums which will not be earned till in the future?

A. Yes, sir.

Q. Now, the state having gotten the advantage of the $42,000 which you had paid prior to '17, also assumes the $420,000 which you paid at the end of 1921 for premuims to be earned in the future. Right?

A. Yes, sir.

[fol. 2035] Q. Which results in a net loss to the state of the difference between $42,000 and $420,000, in that method of calculation, does it not?

Mr. Folonie: We object to any assumption that that is any loss.

Mr. Barker: Well, it speaks for itself, of course.

Mr. Hogsett: If the court, please, he is assuming absolutely an unheard of ratio of increase; an increase of from $100,000 to one million dollars, over ten-fold in the period, merely for the purpose of affording a chance to present a striking and apparent contrast. Now, that is in no sense founded on any fact in the case, but they are made up purely out of his own imagination; and then he asks the witness if that would not result in a loss to the state of that much money.

Mr. Barker: Which it would.

Mr. Hogsett: Of course, if you are going to assume any such ratio as that, that might be true, but that doesn't relate to any such amount of money.

The Referee: I think it is understood that it is purely an illustration and applicable only to the figures assumed for the purpose of illustration. Does not tend to prove any such fact actually exists or ever existed.

Mr. Hogsett: No, but he sticks at the tail end of the question if that doesn't mean that much loss.

The Referee: Yes. Assuming such facts to be true. I dont' think there is any reasonable ground for confusion in the mind of anybody that might be interested in the matter, to assume that that proves such a condition of fact ever existed. Overruled.

[fol. 2036] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: Now, read the question, Mr. Blume.

(Question read by the reporter.)

A. I can't see where the state loses that amount of money.

Q. All right. You understood I am asking you for the purpose of rate making? I have said that four or five times. You know I am asking you these questions for the purpose of fixing a rate, don't you?

A. Basing a rate on these—on the earned premium basis.

Q. Yes. We will start out again now. What would your unearned premiums in 1917—what were they?

A. I don't recall the figure.

Q. They were greater in 1921, were they not?

A. Yes, sir.

Q. And the method of calculation which I have just outlined to you and which you have testified would result in, on an ascending scale of premiums, in the state being charged at the end with more expense than it was given credit for at the beginning, of course——

Mr. Folonie: We object to the hypothesis because based on an improper assumption, namely the relation between the unearned premiums of 1917 and the unearned premiums of 1921, which are not the proper basis for consideration in this case. The proper dates here are December, 1916, and December 31, 1921.

Mr. Barker: I believe there is one day difference. Mr. Folonie is right in one day, but it afforded you an op- [fol. 2037] portunity to present—afforded him an opportunity to prevent you from making an answer in the record?

(No answer heard by the reporter.)

Mr. Barker: He nodded to that. I wish you would put that in the record.

Mr. Hogsett: Which way?

Mr. Barker: He nodded "yes."

The Referee: Proceed.

The Witness: There would be that much of a reduction in the earned premiums on which to base your rate making formula.

Q. And that would result in a disadvantage on an ascending scale of business to the Missouri rate making body?

A. Yes, sir.

Q. And that would be true whether you figured it as I suggested, $100,000 at the beginning and one million dol-

lars at the end, or whether you figured it $100,000 at the beginning and $500,000 at the end?

A. Yes, sir.

The Referee: We will take a five minute recess here, gentlemen.

(Which was accordingly done.)

Mr. Barker:

Q. Now, Mr. Chapman, when you come to settle up with the State of Missouri for the purpose of figuring a rate you report to them on an incurred basis?

A. Yes, sir.

Q. Now, that does not represent the actual insurance business transacted by your company, does it?

A. I think it does.

[fol. 2038] Q. It is less premiums than you have actually received, isn't it?

A. Yes, it is less premiums, possibly, than we have actually received. It is the amount we have earned.

Q. Now, then, in the course of years and years that would wash out, would it not?

A. Yes, sir.

Q. But in a five year period, limiting it from '17 to '21, of course it couldn't wash out, could it?

A. No, sir.

Q. Now, you spoke about your investments in Missouri this morning, and you told the Commissioner what the value of your investments in Missouri——

A. You mean in Missouri securities?

Q. No, your investments in Missouri. I mean particularly your property owned rather than your investments in your office.

A. We don't own any property in Missouri.

Q. Well, you figure your agency assets as worth something, you say?

A. Yes, sir, the agency plant.

Q. Now, if we are trying to figure on giving you a fair rate for doing business in Missouri and you give us the value of your invested capital in Missouri so we could arrive at it—could you do that?

A. No, I couldn't.

Q. Now, the only way to figure a profit or loss on a corporation is to either take its capital stock or its investments, is it not?

A. To figure the profit or loss?

Q. Yes, as to the corporation?

A. Yes, sir.

[fol. 2039] Q. In other words, if you were a telephone corporation and had a capital stock of $100,000 in Missouri but you had assets of $1,000,000, we could figure a profit on your investments or your assets of one million dollars and it would be proper, would it not?

A. Yes, sir.

Q. Now, have you any such investments or assets in Missouri that we could figure were profit or loss?

A. Nothing on the agency plant that you speak of,

Q. Could you value that for me?

A. I could not.

Q. For rate making purposes, then, you are unable to give us the value of your invested assets in Missouri?

A. I couldn't tell you the agency plant.

Q. Then you have a capital of one million dollars in Missouri?

A. Yes, sir.

Q. You must figure then a profit or loss on your capital stock in Missouri, is that the way you figure?

A. Figure profit or loss on the business we transact generally and not in any particular state.

Q. Well, now, let's see how that would work: suppose that on your million dollar capital here in Missouri, just as an illustration, you would do a 10 million dollar business Missouri, and on that 10 million dollar business you had, after all losses, expenses and charges of all kinds had been paid, 1 million dollars. That would be 10 per cent on your volume, would it not?

A. Yes.

Q. And on your capital it would be 100 per cent, would it not?

A. Yes, sir.

Q. So therefore if you settle with the state on that basis you would settle with the state on the theory that you made [fol. 2040] 10 per cent, but you would settle with your stockholders on the theory that you made 100 per cent, would you?

A. Yes, sir.

Q. And your company buys their stock?

A. No, sir.

Q. Does your company own any stock or has it owned any stock since you have been president in any company in which your directors have an interest?

A. Yes, the company has owned for some years some stock in the First National Bank.

[fol. 2043] Q. And what directors of yours are interested in that bank?

A. Mr. Jones and Mr. Watts.

Q. What Jones?

A. Robert McKittrick Jones. F. O. Watts.

Q. Mr. Frank Watts?

A. Yes.

Q. He is interested in many corporations in St. Louis, don't you know that?

A. I think he is. I don't know.

Q. And isn't your company used for the purpose of handling the stock of those companies in which your directors are interested?

A. No, sir. Stock acquired in the First National Bank was acquired some years ago before Mr. Watts became a director.

Q. Well, your directors, then, are interested in investment companies that hold stocks in your company?

A. No, sir.

Q. Where do you buy the most of your stocks?

A. Most of them through G. H. Walker & Company.

Q. That is Mr. Bert Walker?

A. Yes, sir.

Q. Was Mr. Walker ever a director in your company?

A. No, sir.

Q. Any of your directors interested in the G. H. Walker company?

A. Not to my knowledge.

Q. Have you tried to find out about that?

A. Yes, sir.

Q. And you can't find out where they are interested?

A. No.

Q. Do you know whether your directors are interested in any investment companies in St. Louis, and if so can you give me the names of them?

A. Mr. Watts is interested in the First National Bank.

[fol. 2044] Q. You buy stock of that company?

A. No.

Q. Any business dealings with them?

A. None whatever.

Q. Deposit there?

A. Carry a deposit with the First National Bank.

Q. The reason, then, your directors have only 1 per cent or a sentimental interest in this company is that they profit in the way of handling the money of the company, is that it?

A. No, sir.

Q. Now, you pay a commission in St. Louis larger than you pay in any other part of the state, I believe?

A. Yes, sir.

Q. That amounts to 10 per cent, does it not?

A. 10 per cent of what?

Q. Higher than any other part of the state?

A. I don't know what the average is, but it is higher on the greaded scale than it is in the rest of the state.

Q. You pay a flat rate with a 5 per cent increase and a 5 per cent inspection commission, do you not, making 10 per cent?

A. No, sir.

Q. You pay a 5 per cent excess commission, you are sure of that, aren't you, to start with?

Mr. Folonie: On what?

Mr. Barker: Than paid in other parts of the state.

A. I don't know on what you mean.

Q. I didn't think you would after Mr. Folonie asked me.

A. I didn't understand it before, sir.

Q. You pay 5 per cent more to your agents in St. Louis than you pay your agents in any other part of the state?

A. On some classes of business we pay 5 per cent, and some 10 per cent.

[fol. 2045] Q. And in addition to that 5 or 10 per cent you pay a supervising commission, do you not?

A. We do not.

Q. Other companies pay it?

A. I have heard so.

Q. But your company doesn't pay that?

A. We don't.

Q. And your company buys their stock?

A. No, sir.

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[fol. 2045] Q. And in addition to that 5 or 10 per cent you pay a supervising commission, do you not?

A. We do not.

Q. Other companies pay it?

A. I have heard so.

Q. But your company doesn't pay that?

A. We don't.

Q. Then in addition to that you pay a contingent commission in St. Louis based on the profits of the agency?

A. Yes, sir.

Q. Your company pays that?

A. Yes, sir.

Q. And all the other companies?

A. I suppose so.

Q. As far as you know?

A. Yes.

Q. So that amounts to about 15 per cent more commission paid to the City of St. Louis agents than any other part of the state, is that right?

Mr. Folonie: We object, because now he is predicating the 5 per cent upon the commissions, if the court please, and the excess commission or contingent commission upon the net profit—which is an entirely different basis, and we object to adding them together and making a combined amount out of the two.

The Referee: I think we can distinguish—think the witness can distinguish in the answer so as to state the fact as he knows it. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2046] A. The 5 per cent contingent fee to some agents is not 5 per cent of the premiums. Only 5 per cent of the net profit, if any.

Mr. Barker:

Q. Some of the contingent business amounts to 15 per cent, does it not?

A. I have heard it does.

Q. Can you explain to the commissioner why those increased commissions, supervising and premiums, should be paid in St. Louis as against other parts of the state?

A. You are referring to the 15 per cent contingent?

Q. Everything.

A. The difference in the commissions paid to agents in St. Louis is for the additional cost of operating the service that they render and the brokerage commissions that they pay.

Q. Do you pay any brokerage commissions in addition to those others, in St. Louis?

A. No, sir; they come out of agent's commissions.

Q. Agents pay that?

A. Yes, sir.

Q. And that is the only explanation you have for that condition in St. Louis?

A. They maintain—the other agents maintain a more elaborate organization for the conduct of business than is done in the smaller towns.

Q. You mean that the agents in St. Louis maintain a larger, more efficient force than the ones in Kansas City?

A. I don't know about that.

Q. Isn't that what you said?

A. I say the agents in St. Louis maintain a more extensive organization for the conduct of business than is true of agencies in smaller places.

[fol. 2047] Q. Now, your agency commissions amount to about 22 per cent?

A. Average, yes, sir.

Q. Yes. And your taxes, you think, amount to about 6 per cent?

A. That is my recollection; I don't remember the figure.

Q. Now, then, you contribute to a great many boards, do you not?

A. Yes, sir.

Q. Now, let's find out about some of them. Name some of the boards that you contribute to.

A. Missouri Inspection Bureau.

Q. Now, what is that?

A. That is a bureau that applies the schedule to risks in Missouri for the determination of rates.

Q. How much do you contribute a year to them?

A. I think the contribution is 2 per cent of the net premiums.

Q. Of net premiums?

A. That is my recollection.

Q. Why don't you figure with them on the incurred premiums, like you do the state?

Mr. Folonie: We object to the assumption that there is such a thing as incurred premiums.

Mr. Barker: I mean an earned premium.

A. I don't know why it is not done, sir.

Q. You know that it results in a disadvantage to the state, don't you?

A. I don't know that it does.

Q. All right. Outside of the Missouri Inspection Bureau what do you contribute to?

A. Fire Prevention Bureau.

Q. Where?

A. St. Louis; St. Joseph; Kansas City, Salvage Corps of Kansas City and St. Louis.

[fol. 2048] Q. How much do you contribute to the fire prevention bureaus?

A. I don't remember the percentage; 1½ per cent; I think.

Q. Of what?

A. Of the premiums.

Q. What premiums? What kind of premiums?

A. The premiums written.

Q. Premiums written. You don't figure with them on the premiums earned?

A. No, sir.

Q. All right. Salvage corps, how much do you contribute to them?

A. I think it is 1½ per cent.

Q. Where are they located?

A. St. Louis and Kansas City.

Q. 1½ per cent of premiums—written, again?

A. Yes, sir, in those cities.

Q. What else do you contribute to—National Board of Fire Underwriters?

A. Yes, sir.

Q. How much do you contribute to the National Board of Fire Underwriters?

A. My recollection is that it is 1/30 of 1 per cent.

Q. What other boards do you contribute to?

A. In Missouri?

Q. Anywhere.

A. We contribute to all the various state rating organizations and the salvage corps where they are maintained, and similar institutions to those in Missouri.

Q. Do you contribute to all of the different states rating bureaus?

A. Yes, sir.

Q. 48 states?

A. Wherever there is a rating bureau, yes, sir.

[fol. 2049] Q. Do you know what you contribute to each state?

A. About the same percentage that we do in Missouri.

Q. The 2 per cent on your premiums written to the Missouri Inspection Bureau, you couldn't contribute that much to all the other 48 states?

A. 2 per cent of the premiums of those states.

Q. Of those states?

A. Yes, sir.

Q. Then your contribution to the Missouri Inspection Bureau is 2 per cent, or approximately that, of the Missouri business?

A. Yes, sir.

Q. And 2 per cent of each state?

A. To the state rating bureau.

Mr. Folonie: And the percentage to the salvage corps are the percentage of the premiums of that city?

A. In that city.

Mr. Barker:

Q. Now, do you belong to the Western Bureau or Western Union?

A. Western Union.

Q. What do you contribute to the Western Union?

A. I don't know the percentage, sir.

Q. Well, about what is it? You are president of this company and somebody has got to know.

A. Well, I can't carry those figures in my head.

Q. Amount to 2 per cent?

A. No, it is less than 2 per cent.

Q. It is on a premium written basis?

A. It is on the premiums in the middle western territory.

Q. Now, what is the Western Union?

A. The Western Union is an organization of companies [fol. 2050] who have joined together for the advancement of the interests of the business generally and for the attempted regulation of expenses and promotion of good practices.

and expenses eat up the earned premiums we are without a profit.

Q. But the policyholder pays all of the expenses anyway, doesn't he?

A. It comes out of the earned premiums, yes.

Q. And that comes from the policy holder?

A. Yes, sir.

Q. And insurance is really written on the cost plus basis, is it not?

A. Well, no, it is not.

Q. It is not?

A. No.

Q. What is the difference between that and the cost plus basis?

A. Well, because the income from the premiums has not paid the losses and expenses of each and every year. In fact, in very few years, so far as we are concerned.

Q. Now, your company is owned by the Commercial Union of London, isn't it?

A. They own the control of it, yes, sir.

[fol. 2053] Q. Now, has the Commercial Union of London been milking your company, so that you don't have more money?

A. They have taken no money from us except the only dividend we have paid on the stock this year.

Q. The Commercial Union simply owns—has the control of your stock?

A. Yes, sir.

Q. Have they ever been called on to contribute anything to your corporation?

A. No, sir.

Q. You are familiar with the fact that your corporation and all other insurance corporations received a 15 per cent increase in Missouri in 1920?

A. Yes, sir.

Q. Now, in figuring the profit or loss of a corporation, Mr. Chapman, if you were called upon by the directors of that corporation or by the Commercial Union of London, which owns your stock, to tell them what your corporation earned or lost in one year, you would figure the earnings or losses of the corporation on its entirety, its entire activities, would you not?

A. We make those statements of the underwriting profit or loss and the investment profit or loss.

Q. But suppose I was a stockholder in your corporation and I wrote you and asked you to tell me what the corporation earned or lost in 1917 and 1921, inclusive? You would tell me as an entirety, would you not?

A. Yes, sir.

Q. And that is the only way to figure the profit or loss of a corporation, is it not?

A. Yes, sir.

Q. Your company invests in very few real estate mortgages?

A. Yes, sir.

[fol. 2054] Q. You prefer to invest, as president of this corporation, in speculative securities rather than the real estate?

A. I haven't the selection. The board of directors instructs—selects—those, and they prefer to invest in listed securities.

Q. Well, they are speculative, are they not?

A. No more so than any other kind.

Q. You have had enormous losses in your investments in stocks, have you not?

A. In stocks, yes, sir.

Q. Would you have any idea, taking the period in question, from '17 to '21 inclusive, as to the amount of losses which you sustained—losses which you sustained in the investments in stocks?

A. I don't know that we have sustained any losses in stock since 1917.

Q. Wasn't there a tremendous loss in stocks in 1919 by your corporation and all others?

A. Paper losses, yes. With a recovery in 1922.

Q. Suppose that on the 31st of December, 1919 as an illustration, you have purchased stock that year at par and it has gone down to 50 cents. You mark that as a bookkeeping loss of 50 cents?

A. Yes, sir.

Q. Now, if the next year it recovers and you sell it for par, there is still the loss marked of 50 per cent, is there not, on the year previous?

A. The loss is on the book value of the stock when we sell it.

Q. What I mean, Mr. Chapman, is, that on the 31st of December, 1919, if you have got one bond, as an illustration, that you paid $1,000 for, now that bond is only worth $500 on that date. You mark a loss of $500, do you?

A. Yes, sir.

[fol. 2055] Q. Then if on the 31st day of December, 1920, a year later, you sold that bond for $100——

A. (Interrupting.) You mean $1,000?

Q. $1,000, yes. Do you then charge off that loss of the previous year of $500?

A. No, sir. There is no loss. We have sold the bond for what it cost us. The profit or loss is on the cost of the bond; the book value of the bond.

Q. Well, I realize that, but you must remember we are figuring on a basis now, '17 to '21. At the end of the time, I realize, that would wash out. But take this as an illustration: Suppose that on the 31st of December, 1921, the last day of this period, you have a bond which you have paid $1,000 for, but it was only worth $500. You would mark a loss on that date of $500, wouldn't you?

A. Yes, sir.

Q. And if the next year you sold it at par there would be no loss?

A. No, because we sold it for just what we paid for it.

Q. Yes, but you would charge Missouri in settling with her as a rate making body with loss of $500, wouldn't you?

A. No, we wouldn't charge Missouri with a loss of anything.

Q. Let's see if you wouldn't. On the 31st day of December, the last day of this period, 1921, you have a loss on that bond of $500?

A. If we sold it.

Q. No, if you hold it.

A. Yes.

Q. You mark that loss, $500?

A. Yes.

Q. The books as closed right then. The next year you sell it for $1,000. You are charging Missouri with a loss [fol. 2056] which you have—which never occurred, aren't you?

Mr. Folonie: We object to assuming that any profits or losses on the investments are ever computed in the underwriting item at all, in their statement or any other instrument purporting to show profit or loss of underwriting in the State of Missouri.

The Referee: What is the purpose of the inquiry, General?

Mr. Barker: Briefly, to show his profit and loss in his business. We are not talking about the underwriting activities at all. Here is a period from '17 to '21 inclusive. They report a loss of $500, which they recoup the next year. In time, he says, it would wash out. It doesn't wash out in this period and therefore Missouri is unjustly charged with a loss of $500.

Mr. Folonie: General Barker included in his previous statement whether they were not charged with that in rate making and as I understood it the rate making has no relation whatever to whether they made or lost money on their stocks, bonds or their investments, but is predicated exclusively on their underwriting activities, and in their annual statements it is true in their investment exhibit they are required to show their net losses and profits or losses on their investments as a separate exhibit, but it does not enter into any degree into rate making or calculation of proper rates on the raising or lowering of rates.

[fol. 2057] The Referee: Doesn't that involve the question about which you gentlemen differ, as to whether those activities should enter into the rate making basis?

Mr. Folonie: That is another proposition; but he is asking him whether it does not, as a matter of fact, as the business is conducted, whether it does enter into it at all. Now, it doesn't as the business is at present conducted. If he wants to ask him whether he thinks it should enter into it that is another problem.

The Referee: Read the question, Mr. Blume.

(Question read by the reporter.)

The Referee: Overruled. Answer the question.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

A. We are not charging that loss to Missouri. We are simply in our annual statement charging the difference between the book and market value at the end of each year. If the book value of that bond is $1,000 and at the end of a given year it is only worth $500 on the market, it is carried on our books—in this exhibit, as $500. If we sold that bond for cash, the difference between what we would realize for it and what we paid for it is either the profit or loss.

Mr. Barker:

Q. I think perhaps you didn't understand me, Mr. Chapman. On your investment end of your business, that would show a loss of $500 on that year's business—when you recoup it the next year. That is right, isn't it?

A. When we recoup the loss?

[fol. 2058] Q. If there was one.

A. It would show that the market value was less than the book value—annual statement for the period, for that year, end of that year.

Q. And that would be an investment loss of $500 which never really took place?

A. Exactly.

Q. Now, in your contributions do you contribute any to the insurance journals or newspapers or newspaper publications—insurance companies?

A. Contribute to them?

Q. Yes.

A. No, sir.

Q. Who maintains these insurance journals? How are they maintained?

A. I suppose, like any other publication, by its advertising and sale of its papers.

Q. Do you advertise in them?

A. We have done so this year, yes.

Q. You don't contribute any money directly to their support?

A. Nothing other than the purchase of space in their papers.

Q. You don't control their policy in any way?

A. Not at all.

Q. Do you know any of the insurance companies that do control their policy?

A. I do not.

Q. Now, why don't you invest more of your money in real estate mortgages, which net about 6 per cent?

Mr. Folonie: Object to the assumption that they net 6 per cent.

The Referee: Overruled. Some do.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2059] A. That, sir, I couldn't answer. The investment policy of the company is in the hands of the directors and their reasoning, so far as I know, is that real estate mortgages are not readily marketable. They are not sufficiently liquid for our purpose.

Q. Now, after a loss you have 60 days in which to pay it, don't you?

A. If we care to exercise that privilege, under the policy.

Q. Don't you think you could cash real estate mortgages within 60 days?

A. I don't know.

Q. Don't you think that your earnings would be greater in handling real estate mortgages than in stocks?

A. I don't know, sir.

Q. You never investigated that?

A. No, sir.

Q. Now, your company deals, to some extent at least, in reinsurance, I take it?

A. Yes, sir.

Q. What would you say as to whether you ceded more insurance or took more—assumed more or ceded more?

A. We cede more.

Q. Isn't that unusual for a company of your size, to cede more than it assumes?

A. No, sir.

Q. Now, in ceding insurance you turn it over to a company that you deliver it to and pay them what you have received yourself—you pay them a premium less the charges against it?

A. Less the commission.

Q. Less the commission. Now, do they allow you a commission back for giving them that business?

A. Yes, sir.

Q. How much?

A. Sometimes 25 per cent; occasionally 30 per cent.

[fol. 2060] Q. You attend to all the details in handling and looking after the business yourself?

A. Not all the details. I just have the general supervision of it.

Q. Your company after you cede it to another company, you still collect the premiums if any should come in and in case of a loss you settle?

A. Yes, sir.

Q. And you handle all the business connected with that policy?

A. Yes, sir.

Q. That costs you 42 per cent—if it costs you 42 per cent to do business, how do you do business with this company you cede to for 25 per cent? Isn't that unfair?

A. No, it is not unfair, because the business largely that we cede to those companies is the minimum commission business, the business on which we pay 15 per cent. We may occasionally have to cede reinsurance under a risk on which we paid 25 per cent. We do that with no profit to ourselves—simply to protect ourselves against excessive losses.

Q. Now, if you charge the State of Missouri, in settling with the rate making body, 42 per cent for expenses, and you do business with these other insurance companies for 25 per cent, do you think that is fair?

A. Yes. It is the same rate of commission that we have to pay the agent for it. Those other companies—if they took it from an agent would pay 25 per cent or 30 per cent.

Q. Then you charge those companies that you cede insurance to 42 per cent for handling it, which would lower your expense ratio in the state, would it not?

A. I don't know that it would lower it. It would cover the acquisition cost, including taxes and other expenses.

[fol. 2061] Q. Now, you cede more than you assume?

A. Yes, sir.

Q. Therefore you get 25 per cent on all that you cede back from the company that takes it, and yet your general expenses are 42 per cent. How do you explain that?

A. I don't know that I can explain that, sir.

Q. You know Mr. Ellis G. Richards, one time president of the national board, you know of him, I mean?

A. Yes.

Q. He is an authority in the insurance world, is he not?

Mr. Folonie: We object to assuming there are any authorities in this business.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: He answered "yes" with his nod.

Q. You know the publication called the "Insurance Field," published at Louisville?

A. Yes, sir.

Q. You subscribe for it?

A. Yes.

Q. Did you read Mr. Richards' article in which he said it cost about 4½ per cent to handle reinsurance?

A. Yes, sir.

Q. Is that about right?

A. I think so.

Mr. Barker: That is all.

Redirect examination by Mr. Folonie:

Q. Mr. Chapman, is this Collier's magazine you were interrogated about, is that an insurance publication?

A. No, sir.

[fol. 2062] Q. Purely secular organ, is it not?

(No answer.)

Q. In the business of fire insurance, is reinsurance a practical necessity, in your judgment, as the business is now conducted in its general activities?

A. Yes, sir.

Q. Why is that so? What is the necessity of it?

A. The necessity is to provide facilities for an agent to take care of the business that he writes in the companies that he represents. If a company will accept a line of $10,000 for an agent he expects us to accept a proportionate

line. It may be what we consider greater than we care to hazard on that particular risk, in which case we protect ourselves by reinsurance, to reduce our net line to a conservative amount.

Q. Well, why not just refuse to take that excess business that you don't care for?

A. We would destroy our value to the agent and lose his business.

Q. You were interrogated about mutual and reciprocal companies.

The Referee: Pardon me one moment there.

Q. Mr. Chapman, is your expense of handling a given item of insurance lessened by reason of reinsuring that particular item?

A. It is when the premium we pay the agent is less than we receive for the reinsurance ceded.

Q. But so far as handling the business itself is concerned, aside from the matter of commissions paid the agent or received by you, is your expense less in handling reinsured business than the business which you do not reinsure? [fol. 2063] Your own expense?

A. Our own expense is increased by the amount that we have to reinsure, on the average. In some cases very much less and in some cases higher, but the average expense, according to Mr. Richards' analysis, is increased. If we could take our business all net lines, what we would assume on each individual risk, we would eliminate the necessity of reinsurance and the expense incident to handling it.

Q. Then if I understand you correctly, and to illustrate, suppose you have here in Kansas City, we will say, two policies issued on two properties similar in all respects affecting their insurability and each in the sum of $100,000; you retain one and transfer the other, reinsure the other. Is there any difference to your company in the handling of those two items of business after you received the policies and from that time thenceforward to the end of the time?

Mr. Folonie: Direct expense, the court is asking about now.

A. No, there would be no difference in the direct expense.

The Referee:

Q. You spoke of some slight increased expense in the way of transferring, a moment ago, if I understood you correctly?

A. Well, that is if we have to pay the agent as much as we get for the reinsurance. We have the additional expense of handling that line through our books, because our policy is in the hands of the assured and we are financially liable.

Q. Yes.

[fol. 2064] Mr. Folonie: Let me ask another question that perhaps will give another thought to the court along that line:

Q. In the event that you reinsure with the company and an expense comes thereafter, we will say a loss, and an adjuster has to be hired, and we will say that of this $100,000 policy you have retained half of it and reinsured half of it, and then a loss comes on that policy of which you have reinsured half—of course, half the loss would be paid by the reinsuring company. Now, who would pay the expense of adjusters on that loss?

A. That is divided in accordance with the amount of the insurance.

Q. In other words, the reinsuring company pays its proportion of the adjusting, after the insurance becomes effective?

A. Yes.

Q. The acquisition cost, that part of your expense in getting the business from the agent, that you recoup, at least in part, out of your commission you get from the reinsuring company?

A. Yes.

Q. And the expense that comes subsequent to the acquisition, such as adjustment expense in particular, that then falls on the reinsuring company in the proportion in which it has taken over the business from you?

A. Yes, sir.

The Referee: At what you say is the average commission received by your company on the reinsured business, from the reinsuring company?

A. The average would be a trifle under 30 per cent.

[fol. 2065] Mr. Folonie:

Q. And offsets that you have, as the expense of agent's commission, whatever it is, and the cost of handling the business in the way of overhead and bookkeeping, that remains with you?

A. Yes.

Q. Any direct expenses such an adjustment expenses that come thereafter, they bear according to the amount that they have taken over?

A. Their proportion.

Q. Who hires the adjuster in that situation, do you hire the adjuster and the reinsuring company also, or do you handle it?

A. Direct writing company hires the adjuster.

Q. In the other words, you take supervision and charge of the matter and handle it and then bill them for their share of that expenses, is that it?

A. Yes, sir.

Q. And they reimburse you accordingly?

A. Yes, sir.

Q. Mutuals and reciprocal companies you were interrogated about, and particularly with respect to their expense of doing business. Do those companies do business in general on the agency plan, as stock companies do?

A. No, sir.

Q. Do those companies write the variety of lines of business, the varied lines of business that you do; for example, dwelling houses and things of that kind?

A. No, sir; they write selected business.

Q. There are many of these mutuals and so-called factory mutuals which insure only factory buildings, are there not?

A. Yes, sir, principally sprinklered factories.

[fol. 2066] Q. Now, as a matter of fact those sprinklered risks are inspected invariably by stock companies also, are they not?

A. Yes, through the inspection bureaus.

Q. Counsel asked you about having fire prevention days in all states except the State of Missouri. Has Missouri been blacklisted by the companies in that particular so that they decline to have fire prevention days in this state?

A. No, sir.

Q. It is not at the instance of the companies that they were omitted from that general plan of action, was it?

A. No, sir.

The Referee: Just a question, Mr. Folonie. Do you ordinarily derive a profit from the business which you reinsure, or a loss?

A. We derive a profit in the reduction of our loss.

The Referee:

Q. Well, that is a saving. Do you derive a profit?

A. No, no profit.

Q. You do derive—you do not derive any profit on that business?

A. No.

Q. Do you incur any losses by reason of the reinsurance?

A. Yes, sir, we do incur some losses because of the higher cost of acquisition than what we always receive from reinsuring companies.

Q. Does that mean a net loss on that particular transaction, or simply a lesser profit than what would have accrued had that not been reinsured?

A. Well, it serves to increase the commission cost.

Q. Well, does that mean that you lose money on policies which you reinsure?

A. We lose money on all policies that we reinsure where [fol. 2067] we pay in excess of what we receive. We make money on a policy that we reinsure at 30 per cent and pay the agent 15 or 20 per cent.

Q. Well, generally speaking do you ordinarily make a profit or incur a loss or break even on such business as you transfer?

A. We actually incur a small loss.

The Referee: Proceed.

Mr. Folonie:

Q. You were asked about the increase over a period of time in the amount of money losses by reason of fires. Has there been an increase in that period of the burning ratio, or only of the loss ratio?

A. Will you read that question?

(Question read by the reporter.)

A. I should say it has been an increase in burning ratio.

Q. Inquiry was made as to the change in per capita fire loss—increasing. Has the per capita value of property in the country during that same period also increased?

A. Well, there was a considerable increase during the years '18 and '19—increase in values.

Q. You were interrogated about the relatively smaller loss, per capita losses, in England. Is there the preponderance of inflammable building material, particularly wood, that there is in the United States?

A. No, sir.

Q. Have you read in Collier's or any other similar paper that there is a much larger proportion of murders in the United States than there is in England?

A. Yes, sir.

[fol. 2068] Q. Do you think that is reasonably to be attributed to the fire insurance companies doing business?

A. I don't think so.

Mr. Barker: Well, you are not certain about it, are you?

A. I don't see how; it might be possible.

Mr. Barker: Well, it could be possible? Better think about that.

Mr. Polonie:

Q. You were interrogated about a company with a supposed capital of $100,000 doing 1 million dollars' worth of business and there was no assumption in the question about their having any surplus at all. If a company started in with $100,000 of capital and no surplus how many policies could they write before they would be impaired and insolvent?

A. First policy they wrote would impair their capital.

Q. About how much surplus would a company with $100,000 capital, about how much surplus would it have to have to do a million dollars' worth of business with any degree of possibility of surviving?

A. About $400,000.

The Referee: Do I understand, then, Mr. Chapman, that it is not practicable for fire stock insurance companies to do business and survive without having a considerable capital and a considerable surplus?

A. That is correct, yes, sir.

The Referee: And the total aggregate of capital and surplus must constantly increase as the business of the company increases? In other words, to make my meaning clear; a small company starting in with, we will say, $100,000 capital and then the amount of surplus should be [fol. 2069] in proportion to that amount of capital—if it grows rapidly, must increase either in capital or in surplus, one or both, as its business progresses?

A. It must.

The Referee: Otherwise the inevitable result is failure?

A. Yes, sir. The company starting in with $100,000 capital and $100,000 surplus, if it writes any business during the first year has reduced its surplus by the amount it has had to put up to protect the reserve at the end of the first year, and if it continued that it would soon wipe out that surplus unless more was paid in.

The Referee: Yes, so that both capital and surplus are necessary agents to the doing of business at all?

A. Yes, sir.

Mr. Folonie:

Q. And if the business increased very largely, we will suppose a company doubles the amount of business it writes one year over what it did before, what is the natural and ordinary result, as to whether its surplus grows or shrinks when it takes on a large volume of new business?

A. Surplus shrinks.

Q. Counsel interrogated you about life insurance companies and their paying interest or participation money to their policyholders. Is it not a fact that almost all of the life insurance companies in business are wholly or partially mutualized?

A. That is my impression.

Mr. Barker: Now, we object and ask that be stricken out. The witness told me he didn't know a thing about the

[fol. 2070] life insurance business, and I would like to interrogate him and find out when he learned this.

The Referee: His answer confirmed it. He says it is merely his impression.

Mr. Barker: Oh, all right.

Mr. Folonie:

Q. Counsel interrogated you about some automobile company that received payment, or payments in advance for automobiles that were purchased from them. Do you know whether it is true in the business world generally that for cash payments for merchandise and similar goods cash discounts are ordinarily allowed, in the commercial world, for cash prepayment?

A. Yes, sir.

Q. Is that measurably parallel to the discount given the term policies in fire insurance?

A. Yes, I think it is.

Q. In answering counsel as to whether expenses on the premiums, that portion of the premiums which are treated as unearned, was not all prepaid, he asked in his question—he assumed in his question the prepayment of 42 per cent upon all of the unearned part of the premiums. Are there any losses possible to come against the unearned premiums?

A. Yes, sir.

Q. Is there any expense in connection with the adjustment and settlement of losses?

A. Yes, sir.

Q. Is his assumption strictly correct, that your entire expense, which would be, say, on an average about 42 per cent, has been all prepaid, respecting that unearned part of the premiums?

A. No, it is not all prepaid, necessarily; in a year the premiums are written.

[fol. 2071] Q. The acquisition expense, so-called, namely the agent's commissions, those—that part of the expense is prepaid?

A. Yes.

Q. And the overhead items and the items which arise subsequent to that would be in part paid and in part unpaid, so far as the unearned portion is concerned?

A. Taxes would be one of those that would come later.

Q. Yes. You were interrogated as to how much stock you own in the company, and your officers and directors. I will ask you whether you have any feeling that you are in a trust position, so far as the stockholders of your company are concerned, in the performance of your duties as president?

A. I have always considered that that was the position I occupied.

Q. If you owned all of the stock of your company as an individual, in the practical management of your company, would you, so far as the expense and general handling of the company is concerned, handle it any materially differently than you do now?

A. No, no difference at all.

Q. You were asked about the membership of your company in the Western Union. Are the memberships in the Western Union company memberships or are they individual memberships?

A. Individual memberships.

Q. Who is the individual with your organization who is a member of the union?

A. I am.

Q. Is it by reason of your connection with your company and representation of it, however, that you have your membership, is that correct?

A. Yes, sir.

[fol. 2072] Q. Does the increase or the decrease in the value of securities on your books or the profit or loss derived or suffered upon their sale enter at all in the calculation of an underwriting profit as we have frequently defined underwriting profit and loss, and the method of calculating them?

Q. So far as determining the amount of profit or loss of your company in the State of Missouri under your experience for the five years from 1917 to 1921, upon the basis we have mentioned of earned premiums and incurred losses and incurred expenses, is that experience altered in the

slightest degree by the fact that you may have lost or made a great deal of money in the securities that you have been handling?

A. Not at all.

Q. You were interrogated by counsel respecting the amount that you derived from reinsurance which you ceded to other companies. Why, instead of getting 25 or 30 per cent when you reinsure, why don't you get 60 or 70?

A. For the simple reason we can't. We get all we can.

Mr. Folonie: That is all.

Recross examination by Mr. Barker:

Q. Do you try to get more than you do get?

A. Yes, sir.

Q. How many companies do you apply to?

A. Well, we apply to those that are accustomed to accepting reinsurance.

[fol. 2073] Q. Do you figure with them back and forth before you give them the business?

A. Yes, sir.

Q. And you get the best you can?

A. We get the best we can.

Q. And that is 25 per cent?

A. No, sometimes to 30 per cent.

Q. Oh, sometimes 30?

A. Yes.

Q. Varies from 25 to 30?

A. Yes, sir.

Q. Any higher than that?

A. No, sir.

Q. Any lower than 25?

A. No, sir.

Q. Not much variation?

A. No, sir.

Q. Sometimes 26 per cent?

A. No, sir. It is either 25 or 30.

Q. There is no use to figure if you know that is all you can get, is there?

A. We have found out that is all we can get.

Q. And you just accept that?

A. Yes, sir.

Q. Your company don't belong to the Western Union, because you have been advised it would be in violation of the anti trust laws, and that is why you carry the membership, is it?

A. The membership has always been personal, so far as I know.

Q. So that you can make a showing that the corporation doesn't belong to any bureau or union?

A. I don't know what is the reason for it.

Mr. Barker: That is all.

Mr. Folonie: That is all.

(Witness excused.)

[fol. 2074] Mr. Hogsett: It is stipulated by the parties herein, subject to the objection of the defendant, that the companies named as plaintiffs in this suit were each licensed to do business in the State of Missouri during the five year period, were so licensed at the time the suit was filed and are so licensed at the present time.

It is further admitted that the defendant did, on the 5th day of January, 1922, issue an order in words and figures as follows, to-wit:

[fol. 2075] EXHIBIT IN EVIDENCE

Insurance Department, State of Missouri, City of Jefferson

Joshua Barbee, Deputy; R. E. Daly, Actuary; Wilbur P. Marin, Jr., Chief Clerk; Ben C. Hyde, Superintendent

Missouri Inspection Bureau, Waterworth & Terry, Managers, Pierce Bldg., St. Louis, Missouri

Section 6283, Revised Statutes of Missouri 1919, provides that the Superintendent of Insurance, upon his own motion, is empowered to investigate the necessity for a reduction in rates charged by the stock companies doing a fire, lightning, hail and windstorm insurance business in the State of Missouri. I have made such investigation and from such investigation and the underwriting experience

reports of the companies filed with the Insurance Department of Missouri, it appears to me that the earnings in the State of Missouri of the stock fire insurance companies for the five years next preceding such investigation show that there has been an aggregate profit in excess of what is reasonable.

The Missouri Inspection Bureau is the rating and actuarial bureau through which the said stock companies maintain their public rating record as required by the laws of the State of Missouri. Therefore, you are notified as the representative of the stock, fire, lightning, hail and windstorm insurance companies listed with or subscribers [fol. 2076] at the Missouri Inspection Bureau, a list of which is hereto attached, and through the Missouri Inspection Bureau, I desire to notify said companies, that I have this day ordered a reduction of fifteen per cent in the rates now authorized by the Missouri Inspection Bureau and charged by the aforesaid companies on the fire, lightning, hail and windstorm insurance business written in the State of Missouri, which reduction, in my judgment, will leave said companies a reasonable profit after giving proper and reasonable consideration to the conflagration liability within and without the state.

"The aforesaid reduction ordered shall take effect and be in operation on and after the 15th day of February, 1922, and shall be applied subject to the approval of the Superintendent of Insurance. If the companies do not within thirty days from this order of reduction submit a class or classes to which the reduction shall apply.

"Ben C. Hyde, Superintendent of Insurance.

Dated at Jefferson City, Missouri, this 5th day of January, 1922."

It is further admitted that thereafter, on the 14th day of February, 1922, these plaintiffs filed in the Circuit Court of Cole County their petition for an injunction restraining the defendant from enforcing or carrying out the provisions of the order of January 5, 1922, and that a temporary restraining order and injunction was issued by said court, in accordance with the prayer of the petition, enjoining and restraining the defendant from carrying out the [fol. 2077] provisions of said order of January 5, 1922.

That thereafter, on the 14th day of February, 1922, the plaintiffs and defendant, through their counsel, entered into a certain stipulation, which said stipulation is now offered in evidence and marked Plaintiffs' Exhibit No. 1048.

It is further stipulated that on the same date, February 14, 1922, the defendant, in accordance with this stipulation, removed the aforesaid order of January 5, 1922, and that on the same date, in accordance with the stipulation, plaintiffs dismissed their aforesaid injunction suit filed on February 4, 1922.

Mr. Barker: The defendant, in admitting that the proceedings as stated are correctly stated, does not waive the right to object, and does object, to the introduction of any evidence with reference to any suit prior to this present suit, and particularly objects to the introduction of any evidence with reference to a petition for injunction, for the reason that the statutory remedy is exclusive in providing for a petition for review; and further objects to the introduction of the stipulation known as Exhibit 1048 for the reason that the same was entered into during the pendency of a suit which was later dismissed and that at the time the stipulation was entered into this present suit had not been filed and that under the laws of Missouri a stipulation entered into must relate to a pending suit and is incompetent in evidence in a suit filed in the future, and for the further reason that defendant insists that the entire proceedings [fol. 2078] prior to the filing of this suit are immaterial and incompetent and tend to prove no issue of any kind in this suit, and are admitted simply for the purpose of saving the plaintiffs from introducing the entire record of those cases, the defendants not to be bound by the introduction of the records as stated in this stipulation, but reserving the right to object to he same for the reasons given.

The Referee: Is there an objection now pending?

Mr. Barker: Yes.

Mr. Hogsett: There is first offered in evidence under this agreement that we have made a reduction of rates order by the defendant, the Superintendent of Insurance, made on January 5, 1922. It is agreed that after that the order, after the order was made and before it became effective, an injunction suit was filed in the Circuit Court of Cole County on February 4, 1922, to enjoin him from

carrying the provisions of his order into effect; that thereafter, on the 14th of February, 1922 this stipulation was entered into, and this is offered in evidence.

The Referee: Referring now to Exhibit No. 1048?

Mr. Hogsett: Yes. That pursuant to this stipulation the reduction order of January 5th was revoked by the defendant and the injunction suit was dismissed by the plaintiffs.

Mr. Barker: And now the defendant admits that those proceedings were had but objects to the testimony and the offers for the reasons previously stated.

The Referee: How are those matters material?

[fol. 2079] Mr. Hogsett: Simply as a part of the history which led up to the present order, and for the further reason that there were certain agreements, both on the part of the defendant and of the plaintiff in this stipulation, which were claimed in the bill were not complied with, by the defendant, and that as stated is one of the grounds for relief asked in the present suit.

The Referee: That is a part of your petition in the pending cause and one of your grievances set forth in your petition.

Mr. Hogsett: That is correct.

Mr. Folonie: Supplemented briefly by stating that the gist of this stipulation is a provision that the defendant would have a new hearing in consideration of the dismissal of the then pending suit; he would withdraw his order and have a hearing and then make a new order, and the new order subsequently made by him is the one we are now seeking to set aside and reviewing. We claim that he has breached the terms of the stipulation in his order and the stipulation also provides for the giving of bond on our part and permitting us to collect the old rates pending the suit. The purpose of these other proceedings antecedent to the stipulation goes to show the considerations which moved the parties to enter into the stipulation, the powers that existed in the attorneys to make the stipulation, and really the stipulation is one of the bases of this suit; and the defendant's claimed breach of it.

The Referee: Objection overruled.

[fol. 2080] Mr. Barker: Well, before the court passes upon that, in view of the statement that has been made, our

position might be stated, because we think it is still material, of some material importance, in that I don't understand there is any charge in this suit which we are trying now that a hearing was not held, but the petition expressly states that the superintendent did give them a hearing, so there is no violation of the stipulation as to that. With reference to the violation of the stipulation as to giving a bond, they are now giving a bond and there is no breach of the stipulation as to that effect. The stipulation was given and so shows on its face prior to the filing of this suit and prior to the order of reduction made in this suit, and our contention is that a stipulation relates only to a pending action. Further, that this defendant is a state officer and that he is under a duty to make investigations and hold hearings and that acting under the law he held a hearing, gave the notice, was attended by the plaintiffs, hearing was had, and the order was made; and this petition for review was filed and we are now trying this suit; and we insist that no purpose can be served in allowing to go into this record the proceedings in the other action. They can't in any sense be material; can't be binding upon an officer of the state and can't be binding in any way in this action. We don't think they are competent for any purpose at all.

Mr. Jacobs: I want to ask, for the record, what violation of the original stipulation do the plaintiffs claim in this proceeding?

[fol. 2081] Mr. Hogsett: I will read it. In the stipulation it is stated that the defendant shall at the conclusion of the hearing therein provided for find in writing all essential material and competent matters of fact by the evidence, and shall make the following findings:

(a) What was the profit of said stock fire insurance companies during the five years preceding said investigation, including the year 1921.

(b) What is a reasonable profit on the business written in this state.

(c) What per cent of premiums received is allowed for the conflagration hazard.

(d) What is the basis upon which earnings in Missouri should be determined and ascertained.

(e) What is the ratio of expenses incurred to premiums earned in this state during said period.

(f) What is the ratio of losses incurred to premiums earned in this state during said period.

(g) What is the total amount of earned premiums during said period.

The petition alleges that by the order in question the defendant superintendent of insurance, in violation of the terms of the stipulation, above set forth, has wholly failed and refused to state in writing in said order his findings as to any of the matters of fact specifically provided for in the stipulation above referred to, and particularly in paragraphs lettered (a)-(g), inclusive, therein.

That is the precise ground stated.

[fol. 2082] Mr. Barker: Of course, this case is being tried under the Missouri rate law.

Mr. Hogsett: Yes.

Mr. Barker: And any agreement which this gentleman, being the superintendent of insurance, makes which was not contemplated by that law would be a mere gratuity, mere gratuity bestowed upon these gentlemen; but the order itself answers all of the questions, makes a complete finding, and satisfies even that stipulation, which of course we are not in any sense interested in in this suit.

Mr. Hogsett: Of course, we take issue with you on that.

Mr. Folonie: We will inform the court fully on the legal phase of that in due time.

Mr. Jacobs: To permit the offer of this testimony would mean a trial of that other matter in this proceeding. Now, as General Barker has said, there are certain well defined duties that the law requires the superintendent of insurance to perform, and in the execution——

The Referee (interrupting): Your position is that the superintendent of insurance has no power to part with any of his authority?

Mr. Jacobs: No, and to go into this particular matter would mean the trial of what transpired there. Now, were we to go into that, and suppose our position would be, and we would have to try it out before this court, that this stipulation was based upon an agreement upon the part of the plaintiffs to produce certain testimony, certain evidence

and certain data, which they failed to produce; that there [fol. 2083] was a violation on their part of the stipulation and that this stipulation could not have been complied with by the superintendent; now, that matter, if the offers are permitted by the court, would have to be tried out in order that the court should have a fair and impartial idea of what transpired with reference to the original proceeding, and no matter what the order made was, here is a proceeding held under the statute and presumably legally under the statute to inquire into this rate and its reasonableness under the law, and surely it wouldn't throw any light upon that matter to go into certain stipulations and certain proceedings, preceding hearings that were instituted by the plaintiff and entered into between the plaintiff and defendant in this case. It strikes me as the court says that this is an official or officer of the state and he can't grant or give away any right or agree to do anything in the matter of the performance of his duty, under a definite and specific statute; that all these offers are incompetent, irrelevant and immaterial and do not tend to prove or disprove any issue in this case whatever; couldn't throw any light on this proceeding. Certainly, the language of some preceding stipulation or some injunction proceeding couldn't throw any light on this matter for this court to pass upon this particular matter.

Mr. Folonie: I think we will defer to counsel's method of approach on this and indicate that his view is our view. We don't claim that the commissioner has parted with his rights in any way. It is our contention that this stipulation [fol. 2084] was well within his powers, as it related to the procedural method that was to be pursued and followed, and the brief record we made of the proceedings of which the stipulation was an inherent part, would serve the purpose only of showing the circumstances under which the stipulation was given and the relation of the parties at the time, and the authority or lack of it of the parties under the circumstances to enter into and make such a stipulation. How far the stipulation may be binding and how far it may be required to be followed or may be departed from, those are all matters that Your Honor can determine at a later time. I think the stipulation is an essential to our transcript here—that it appear in evidence, although the effect and force of it of course will be for later consideration.

(d) What is the basis upon which earnings in Missouri should be determined and ascertained.

(e) What is the ratio of expenses incurred to premiums earned in this state during said period.

(f) What is the ratio of losses incurred to premiums earned in this state during said period.

(g) What is the total amount of earned premiums during said period.

3. That if, based upon such findings of fact and the determination of the Superintendent of the Insurance Department, an order reducing the rates charged by such stock companies on all fire, lightning, hail and windstorm insurance business written by them in the State of Missouri be made by said Superintendent of the Insurance Department such order shall apply to all classes alike, and the said insurance companies, if dissatisfied with said order, will proceed to secure a review thereof by the trial de novo in the Circuit Court of Cole County, Missouri.

4. That no injunction shall be applied for in said matter restraining the enforcement of said order, but pending such review and until the final determination of said cause in whatever court it may be finally lodged, the rates in force prior to the making of such order shall be collected by such insurance companies, and such insurance companies shall give bond, conditioned and in such amount as the court may direct, to refund to the assured any excess of [fol. 2088] premiums collected by them if such order of the Superintendent of the Insurance Department be finally sustained by decree or judgment of a court of last resort.

5. That in such matter the question of the constitutionality of Sections 6283 and 6284, Revised Statutes of Missouri, 1919, shall not be raised, nor shall the legality of the hearing above provided for be questioned.

(Signed) Bates, Hicks and Folonie, Seymour Edgerton, John S. Leahy, Attorneys for the Plaintiffs. Jesse W. Barrett, Attorney General; Merrill E. Otis, Asst. Atty. Genl., Attorneys for the Defendants.

[fol. 2089] (Whereupon an adjournment was taken pursuant to such order; but thereafter, pursuant to agreement of parties and order of the referee, a further adjournment was taken until Monday, the 17th day of December, A. D. 1923, to meet at that time at the place last above indicated.)

(Pursuant to adjournment heretofore noted, parties reconvened at the Kansas City Club, Kansas City, Jackson County, Missouri, December 19, 1923, and the following proceedings were had:)

Appearances same as before.

The Referee: Proceed, gentlemen.

Mr. Folonie: Mr. Gephart is ready to be sworn.

[fol. 2090] W. F. Gephart, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name?

A. W. F. Gephart.

Q. And where do you live?

A. St. Louis, Missouri.

Q. What is your business?

A. Vice president, First National Bank.

Q. Have you always been engaged in the banking business, and if not, tell how long you have been in that business, and what you were engaged in before that time.

A. I entered the banking business in 1919. Previous to that time I was connected with universities as professor of economics in several institutions.

Q. What is the position that you hold with the bank you mentioned?

A. Vice-president.

Q. And what are the general nature of the duties you perform there, and the general nature of your business?

A. I have charge of certain accounts, such as the insurance account, railway accounts and charge of the foreign department, and also our statistical and research department, and also member of the management committee.

Q. Prior to the time you entered into your present activities, what was your preparation for entry into the teaching field that you have mentioned?

A. I had the regular undergraduate work at Ohio State University and then took my graduate work at Columbia [fol. 2091] University, New York, specializing in economics and government.

Q. How long a course did you take there?

A. Three years, and received the regular doctor's degree.

Q. Which is doctor of what?

A. Doctor of Philosophy.

Q. And since then, upon completing that course, what did you do?

A. I went to Ohio State University, professor of economics, remaining there until 1913, when I came to Washington University, St. Louis, Missouri, in charge of the department of economics there; and later on as dean of the school of commerce.

Q. In connection with your work in economics, did you in these universities as part of your work teach and give attention to the subject of insurance, among other subjects?

A. I did; taught the subject of insurance for a number of years.

Q. Have you written any books on the subject of insurance that have been published?

A. Yes, I have written four books on insurance.

Q. And what are their titles?

A. "Principles of Life Insurance," "Principles of Fire Insurance," "Insurance and the State," and "The Effect of the War on Insurance."

Q. In your teaching and in your studies, was that branch of insurance known as fire insurance, was that one of the subjects to which you gave attention in studies or teaching?

A. Yes.

Q. Have you made a study in connection with those activities, comparatively, between insurance and other classes [fol. 2092] of business and the economic features of business in general in the business world?

A. I have.

Q. Have you made examination into the subject of the cost or expense of the conduct of fire insurance and other lines of insurance and the question of the profit proper

to be derived, the risks of conflagrations incident to the business, the returns proper to be made by such companies to their stockholders—have all those subjects been under consideration by you in those various activities?

A. I have given attention to them.

Q. In the course of your studies of this subject what have you found as to the expense which in fact exists in the fire insurance business in general, in the conduct of fire insurance companies as they have been conducted in the past?

A. That averages about 42 per cent, varying, of course, from company to company; but in general, around 42 per cent.

Q. Does that expense, generally speaking, is it larger or smaller than the average expense in the case of companies newly entering into business?

A. The new company naturally has higher expenses in doing business than the old established company that is under way.

Q. What is the fact as to the effect, the trend in general, of a large volume of business, compared with a small volume of business of a company, as affecting its expense proportion or ratio?

A. There is no exact direct relationship between volume of business and the expense, although there is a tendency, a general tendency, as volume of business increases, for decrease in expenses, according to the law that the greater [fol. 2093] volume of business does bring, in connection with some expenses, lower relative expense, but it is hard to be dogmatic and directly proportion expense to volume of business.

Q. Does that tendency for reduction of expense, when a large volume of business occurs, is that peculiar to fire insurance, or is that an economic fact in business in general?

A. Economists consider it as a general law or principle, that they call the decreasing cost with increased expense, that characterizes many lines of business. It is subject, of course, to numerous exceptions, and depending on the skill of management and many other factors.

The Referee: Pardon me. You used the phrase, "Decreasing cost with increased expense."

A. Did I say that?

The Referee: I thought so.

A. I meant "decreasing cost with increased volume of business."

Mr. Folonie:

Q. In your consideration of the subject, have you given consideration to the reasonability of the expense of 42 per cent, which you state is that of insurance in general, when considered comparatively with other lines and kinds of business?

A. Yes, data that is available seems to indicate that other lines of business have as great or greater expense in cost of doing business.

The Referee: Just a moment. What is that percentage based on, Mr. Gephart?

A. Volume of business.

The Referee: 42 per cent of the volume of business?

[fol. 2094] A. Yes.

The Referee: What do you mean by the volume of business, total gross premiums written?

A. No, I mean the earned premiums.

The Referee: 42 per cent on the earned premiums, then, is the standard rate of expense, as you find it?

A. Yes.

The Referee: Proceed.

By Mr. Folonie:

Q. Now, in other lines of business, what in general is the expense of acquisition and distribution in business in general, outside of fire insurance? I am talking about the business world now. What is the average cost of acquisition of business and distribution on the dollar?

A. I have here some data—based upon the studies of the Harvard University—showing operating expenses in different lines of business. In 1919, in the retail jewelry store business, it shows a total expense of 32.3 per cent, running from a low 17.9 to a high 50.9.

Q. What is that percentage based on?

A. That is based upon the volume of sales. That was for 1919. We have here for drug stores in 1919—no, for department stores, in 1921—this is pro rated according to

the net sales and volume of business. For those doing a business of 2½ million dollars and over it is 28 per cent. For those doing a business of 1 million to 2 million, to $2,799,000, is 28 per cent; and for those from $500,000 to $999,999, 28.3 per cent; those from $250,000 to 499,000, 27.6; those less than $250,000 26.8 per cent.

The Referee: That is based on the gross sales receipts? [fol. 2695] A. According to the volume of sales.

By Mr. Folonie:

Q. That is gross sales or net sales?

A. That is net sales equals 100 per cent. The net sales in both these data here.

The Referee: What do you mean by net sales?

By Mr. Folonie:

Q. Better get your definition as they use it there so you will be sure to use it as they do. (Referring to pamphlet.) I was looking for their definition of net sales. Takes into account returns, doesn't it, in arriving at it?

A. Yes, but I was going to—I was trying to find their definition of net sales that they made in this study. Here it is. "Net sales is a figure that is used to represent the volume of business of each firm. It is the figure on which the precentage of expense and of gross margin and of net profit or loss are reckoned. It was determined by deducting from gross sales returns and allowances to customers, as well as cash discounts to employes and other purchases, and the amount collected from customers for excise and luxury taxes."

The Referee: That represents, then, the net amount of cash accruing to the particular firm as the result of the business for a given period of time?

A. Yes.

By Mr. Folonie:

Q. Has there been any investigation of the subject of the expense of acquisition and distribution in business in general by any public body?

A. Yes. A committee generally known as the Anderson

investigating committee on marketing costs, the joint commission for agricultural inquiry.

[fol. 2096] Mr. Barker: Pardon me a moment. We have no objection to this witness reading and quoting from reports throughout the country, with the understanding that we shall have the same privilege. Every time we have attempted to do it we have been met with strenuous objection, and we will want to introduce various reports from committees the same as the Anderson committee and others, and with the understanding with Mr. Folonie that we may have that privilege we have no objection to this line of testimony, if it is so understood.

Mr. Folonie: You can't get any horse-trade with me. I am offering this because I think it is competent, and you will have to take the same chance.

The Referee: There is no objection.

Mr. Barker: Well, in the absence of an agreement I will object to it as hearsay and not sufficiently proven and not tending to convey any light upon this subject. The documents are not properly identified so as to constitute—hearsay.

The Referee: I think that objection is well taken, Mr. Folonie.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

By Mr. Folonie:

Q. What was the joint congressional committee that you mentioned?

A. It was a joint committee of the House and the Senate appointed to investigate marketing and distribution costs, headed by Mr. Anderson, congressman from Minnesota.

[fol. 2097] Q. Have you examined the report of that committee as the same is printed and published by the government of the United States?

A. I have.

Q. Have you it here with you?

A. I have.

Q. Now, the matters as found and stated by that committee, are they in accord with your own investigation and

inquiry? Into the subject matter as to costs and expenses of distribution in general in the business world?

Mr. Jacobs: One minute.

Mr. Barker: I think in a spirit of fairness we will withdraw any objection to this witness—allowing him to testify—as to what he has heard or what somebody has told him about it—we will withdraw any objection now as to what he has heard about this.

Mr. Folonie: Don't need to take this, but I will say this:

(Mr. Folonie makes remark outside of record.)

Mr. Barker: Well, take this: Mr. Folonie has insistently objected to the Lockwood Investigating Committee Report, which is a report from the New York Legislature, and objecting to the report from the New York Department of Insurance, which is made by statute, and he has objected to the reports of the State of Kansas and the reports of the State of Kentucky and other states, which are made by law, and it doesn't do him to say outside of the record that he hasn't done this, because he has constantly done it.

The Referee: Nothing before the referee: Proceed, gentlemen.

Mr. Folonie: Read the question.

(Question read, as follows:)

[fol. 2098] "Now, the matters as found and stated by that committee, are they in accord with your own investigation and inquiry into the subject matter as to costs and expenses of distribution in general in the business world?"

A. They are.

By Mr. Folonie:

Q. Now, will you state the costs of marketing and distribution in general, as to the costs—I am talking about page 8 of that pamphlet.

Mr. Barker: May I see those, if you have finished with them?

Mr. Folonie: I don't know that I have finished with them (addressing witness). Let him look at them, however, while you the using this one.

The Witness: All right.

(Mr. Barker examines documents.)

By Mr. Folonie:

Q. As to the general percentage of expense upon the dollar, paid for commodities by consumers in the United States, what is the cost of distribution and marketing?

A. It varies, of course, from commodity to commodity, and I think perhaps that it is one of those cases where your average don't tell very much.

Mr. Barker: Now, I would rather that the witness would not conclude the statement by his observations on that, but would rather that he would state what they are.

Mr. Leahy: He is speaking as an expert.

Mr. Barker: He is minimizing the report which he is reading from.

The Witness: No, I said that the answer to that question, that I didn't care whether say 25, 35 or 45, because I [fol. 2669] don't think an average of distribution costs, of commodity costs in general is worth anything.

Mr. Barker: I ask that be stricken out. The witness was not asked for that. He was asked what it was.

The Referee: Read the question, now.

(Question read by the reporter.)

Mr. Barker: I want it stricken out, all given up to this time, because not responsive to the question; it calls for a definite answer.

The Witness: May I have the question read again, then?

(Question again read by the reporter.)

A. I don't know.

By Mr. Folonie:

Q. Have you in this congressional report the costs of distribution and marketing of specified commodities?

A. I have.

Q. And are they as they are given in accord with your experience and knowledge of economic conditions in general?

A. They are.

Q. Will you take the cost of distribution and marketing of various products which are enumerated?

A. In the case of bread, it shows the total distribution cost of 1913 was 56.4 per cent.

The Referee: Of what?

A. Of the dollar. This is cents. 56.4 cents out of every dollar was taken up by distribution.

By Mr. Folonie:

Q. Of every dollar of what?

A. Of every dollar of the sales made of these commodities.

[fol. 2100] The Referee: Does that mean net sales gross sales, or what?

A. That includes the bread—means the gross sales, I believe.

By Mr. Folonie:

Q. It is the consumer's dollar that is taken as the standard?

A. Yes; of the policy paid by the consumers, 56.4 cents went to distribution cost in 1913.

In 1916, 49.7 cents, and in 1921, 49.2 cents of every consumer's paid dollar; went for the cost of distribution.

Now, in the case of corn flakes, the report shows that in 1913 70.5 cents out of every consumer's dollar was taken by the distribution costs.

In 1916, 55.3 cents and in 1921, 63.4 cents.

The Referee: What is included in distribution costs?

A. Includes in this last commodity, corn flakes, manufacturer's cost of selling, advertising, transportation, taxes, profit, wholesaler's operating expense, retailer's operating expense and profit.

By Mr. Folonie:

Q. That takes it from the side of the commodity, then, to the consumer?

A. Yes.

Q. Go ahead, then.

A. In the case of rolled oats, in 1913, 67 cents out of

every dollar went for distribution costs. In 1916, 61.84 cents and in 1921 69.48 cents.

In the case of men's suits, in 1913, 32.3 cents. In 1920, 30 cents, and in 1921, 31.9 cents.

[fol. 2101] In the case of men's shoes, in 1913, 28.7 cents; 1920 28. cents, and in 1921 28.3 cents was taken.

The Referee: What is included in the remainder of the typical dollar there, Mr. Gephart?

By Mr. Folonie:

Q. Suppose you give the entire detail of the dollar, where it all went, as to any commodity there you see fit.

A. Well, we might take for example corn flakes and divide under the two heads of production cost and distribution cost.

Now, under production cost comes, first—shall we just take one year to illustrate? Suppose we take the year 1913. The producer received out of the consumer's dollar 16.2 cents. The transportation cost, 2.9 cents; the elevator margin and profit, 4.5 cents, and the cost of manufacture, 5.9 cents. That made a total production cost of 29.5 cents. Then under the distribution cost, we had the manufacturer's cost of selling, 10.2 cents; advertising, 11.1 cents; transportation, 6.8 cents; taxes, 2.8 cents; profit, 4.9 cents; wholesaler's operating expense, 6.7 cents; profit—that is, the wholesaler's, 2 cents; retailer's operating expense, 14.6 cents; and profit, retailer's 11.4 cents; making a total of 70.5 cents, which added to the total production cost of 29.5 cents, makes the dollar that the consumer pays.

The Referee: Now, the production cost, is that the same figure you mentioned a moment ago as the producer's cost?

A. Yes.

The Referee: Assume that corn flakes is a product of corn; that figure represents the amount received by the grower of the corn?

[fol. 2102] A. Not necessarily, in the case of production, because part of the production of the corn would be the transportation to the elevator, and until it got ready to go into the stage of corn flakes, that is into the manufacturer's hands, because that first element of production includes transportation and elevator margin and profit and then comes the cost of profit. It wouldn't necessarily mean

that the farmer got that first 16.2 cents. He might get less than that.

The Referee: It does mean the cost of putting into the hands of the manufacturer the raw material from which the product is made?

A. It includes, as the referee said, the cost of the commodity in the hands of the manufacturer, and his cost of manufacturing, and the transportation to him. The producer receiving his 16.2 cents out of that production cost of 29.5 cents.

By Mr. Folonie:

Q. In other words, it is the manufacturer's production cost that is in your production item, is it?

A. Yes.

Q. And not the grower's production profit?

A. No.

The Referee: That represents the cost at the time the product is ready to leave the manufacturer's hands for consumption?

A. Yes, when he begins to spend money for advertising, transportation, and what not.

Q. By Mr. Folonie: And the distribution, then, is the cost from the time he has made the corn flakes up to the time the poor consumer has it to pay for?

A. Yes.

[fol. 2103] Mr. Folonie: Q. Does this congressional report show the amount of profit in cents derived by the manu-[fol. 2104] facturer and the wholesaler and the retailer in these various industries?

A. Yes; with these various commodities.

Q. Please state it.

A. In the case of the bread, the manufacturer's profit varied from 4.4 cents out of the dollar to 7 cents out of the dollar, through the three years, '13, '19, and '21. Did you ask for the retailer's profit?

Q. Yes.

A. The retailer's profit varied from 2.9 cents in 1921 to 7.7 cents in 1913.

Q. I think probably, to make it intelligible, we ought to know what the cost to each one of those was, to get his pro-

portion, so as to better—there is a table before you, is there not, showing the costs of the manufacturer and the wholesaler and the retailer in these various industries, and the profit derived by each, where there is a wholesaler?

A. In the case of bread, there is the manufacturer's cost of selling and his profit, and the retailer's operating expense and his profit.

Q. Yes.

A. And likewise in the case of corn flakes, the manufacturer's and the wholesaler's profit, and the retailer's profit.

Q. Yes; in cents?

A. In cents. In the case of corn flakes, the manufacturer's profit varied from .5 of a cent to 8.3 cents and the wholesaler's from 1.4 cents to 2 cents.

Q. I think probably we can simplify it, instead of having you read these in by detail, by offering the pages. Page 210 is that—table D-14—what is that?

A. That shows the distribution of the dollar of the consumer for bread.

[fol. 2105] Mr. Barker: We object to that offer in the record, as tending to prove no issue in this case and not in any sense bearing upon the fire insurance situation; cumbersome and burdensome and expensive to carry in the record. The witness has testified fully as to what they show and then after that Mr. Folonie offers the documents. We object to them for the reasons stated.

The Referee: What are you offering now?

Mr. Folonie: I am going to offer this tabulation on page 210, if the court please. I will submit it to the court for inspection.

The Referee: Overruled.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still except.)

Mr. Folonie: We offer in evidence the Table D—to make it specific—D-14, entitled, "Distribution of dollar consumer pays for bread," at page 210 of this report.

The Referee: Better identify that report. It hasn't been clearly identified.

Mr. Folonie: Yes. The instrument in which the same

appears being a pamphlet, "67th Congress, 1st session house of representatives, report No. 408, marketing and distribution. Report of the joint commission of agricultural inquiry, in four parts, part IV, submitted by Mr. Anderson. October 15, 1921, ordered to be printed with illustrations. Washington Government Printing Office, 1922." Only the table D-14, and I will put a circle around it so it will clearly identify the portion which I am offering.

[fol. 2106] (Whereupon the document referred to, having been offered and received in evidence, was at the time duly marked by the reporter "Plaintiffs' Exhibit No. 1082," and is in the words and figures as follows, to-wit:)

[fol. 2107] (Witness Gephart: Dr. by Folonie.)

(Plaintiffs' Exhibit 1082)

Table D 14—Distribution of Dollar Consumer Pays for Bread

Production:	1913 Cents	1916 Cents	1921 Cents
Producer receives	28 0	32 7	28 1
Transportation	2 8	2 3	2 6
Elevator margin and profit	1 1	2 3	2 8
Flour manufacture	6	7	6
Transportation	2 4	2 8	4 4
Cost of bread manufacture	8 7	9 5	12 3
Total	43 6	50 3	50 8
Distribution:			
Manufacturer's cost of selling	15 7	15 2	16 4
Overhead	12 2	8 8	8 5
Profit	7 0	4 4	5 7
Retailer's operating expense	13 8	15 4	15 7
Profit	7 7	5 9	2 9
Total	56 4	49 7	49 2

[fol. 2108] Mr. Folonie: Table D-15, on page 212, what is that?

A. "Distribution of dollar consumer pays for corn flakes."

Mr. Folonie: We offer in evidence Table D-15.

Mr. Barker: The same objection as to the previous instrument.

The Referee: Overruled.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still except.)

(Whereupon the document referred to, having been offered and received in evidence, was at the time duly marke by the reporter "Plaintiffs' Exhibit No. 1083," and is in the words and figures as follows, to-wit:)

[fol. 2109] (Witness Gephart; Dr. by Folonie.)

(Plaintiffs' Exhibit 1083)

Table D15—Distribution of Dollar Consumer Pays for Corn Flakes

Production:	1913 Cents	1916 Cents	1921 Cents
Producer receives	16 2	29 1	21 0
Transportation	2 9	3 5	5 9
Elevator margin and profit	4 5	3 9	1 6
Cost of manufacture	5 9	7 8	8 1
Total	29 5	44 3	36 6
Distribution:			
Manufacturer's cost of selling	10 2	11 1	7 3
Advertising	11 1	5 6	4 5
Transportation	6 8	8 6	9 1
Taxes	2 8	2 2	7 0
Profit	4 9	5	8 3
Wholesaler's operating expense	6 7	6 9	8 3
Profit	2 0	1 7	1 4
Retailer's operating expense	14 6	10 8	13 3
Profit	11 4	8 3	6 0
Total	70 5	55 7	63 4

[fol. 2110] Mr. Folonie: We offer in evidence page 214, Table D-16. What is that?

A. Distribution of dollar consumer pays for rolled oats.

Mr. Barker: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

(Whereupon the document referred to, having been offered and received in evidence, was at the time duly marked by the reporter "Plaintiffs' Exhibit No. 1084," and is in the words and figures as follows, to-wit:)

[fol. 2111] (Witness Gephart; Dr. by Folonie.)

(Plaintiffs' Exhibit No. 1084)

Table D16—Distribution of Dollar Consumer Pays for Rolled Oats

Production:	Cents 1913	Cents 1916	Cents 1921
Producer receives	23 10	25 99	17 83
Transportation	1 32	1 33	2 04
Elevator margin and profit	76	1 82	1 73
Cost of manufacture	7 82	9 02	8 92
Total	33 00	38 16	30 52
Distribution:			
Manufacturer's cost of selling	5 69	5 06	6 73
Advertising	11 22	7 63	8 64
Transportation	4 68	5 20	8 13
Taxes	5 56	4 09	2 62
Profit	8 20	9 46	13 55
Wholesaler's operating expense	6 44	6 59	7 99
Profit	1 98	1 34	74
Retailer's operating expense	14 84	15 48	15 68
Profit	8 39	6 99	5 40
Total	67 00	61 84	69 48

[fol. 2112] Mr. Folonie: Take D-18, page 221, what is that?

A. Distribution of dollar consumer pays for men's clothing.

Mr. Folonie: We offer it in evidence.

Mr. Barker: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

(Whereupon the document referred to, having been offered and received in evidence, was at the time duly marked by the reporter "Plaintiffs' Exhibit No. 1085," and is in the words and figures as follows, to-wit:)

[fol. 2113] (Witness Gephart; Dr. by Folonie.)

(Plaintiffs' Exhibit No. 1085)

Table D18—Distribution of Dollar Consumer Pays for Men's Clothing

	1913	1916	1921
Production:			
Raw material (cloth)	18 0	21 4	18 2
Raw material (trimmings)	12 1	9 4	10 0
Cost of manufacture	19 8	19 9	23 3
Overhead—Operation	12 8	15 2	15 1
Profit	5 0	4 1	1 5
Distribution:			
Retailer's operating expense	22 7	26 4	30 6
Profit	9 6	3 6	1 3

[fol. 2114] Mr. Folonie: What is Table D19, page 223?

A. "Distribution of dollar consumer pays for men's shoes."

Mr. Folonie: We offer it in evidence.

Mr. Barker: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

(Whereupon the document referred to, having been offered and received in evidence, was at the time duly marked by the reporter "Plaintiffs' Exhibit No. 1086," and is in the words and figures as follows, to-wit:)

[fol. 2115] (Witness Gephart; Dr. by Folonie.)

(Plaintiff's Exhibit No. 1086)

Production:	1913	1916	1921
Raw materials	40 8	44 2	38 5
Cost of manufacture	17 7	13 6	18 3
Operating overhead and selling	9 6	10 9	10 9
Taxes		1 1	9
Profit	3 2	1 7	3 1
Distribution:			
Retailer's operating expense	24 1	25 3	26 9
Profit	4 6	3 2	1 4

[fol. 2116] Clerk's certificate omitted in printing.

[fol. 2116½] Mr. Folonie: I will call to the court's attention, so that the court may use these tables understandingly—it is quite apparent that the retailer, when you get to the retailer, would pay all that preceding, including the manufacturer's production cost and manufacturer's cost and selling, his overhead and the manufacturer's profit, would all be included in the price the retailer would pay, so that in getting the retailer's basis the court would have to take it down to where the retailer starts and then the retailer's expense and profit, computed on what precedes it. In those cases where there is a wholesaler in between you have to take the point where the wholesalr starts and

then down to where the retailer starts and get the cost of the product for each one.

The Referee: All right.

Mr. Folonie:

Q. What is the customary method, if you know, in computing profit and loss of insurance companies, what basis figures—or, for instance, what premium figures, what basic premium figure is taken as the basis in making profit and [fol. 2117] loss calculations?

A. Earned premiums.

Q. What does the term "earned premium" mean, as it is so used in making such calculations?

A. First, the underwriting income is arrived at or should be arrived at by deducting from your earned premium all your incurred losses and incurred expenses, and your earned premium should be gotten at by taking your premium receipts and so forth, for any given period, as for a year, and adding to them your earned premium of, for example, December 31st.

The Referee: Of the preceding year?

A. Of the preceding year; and then subtracting from them the unearned premium reserve as of the end of the current year—the beginning of the next year.

Mr. Folonie:

Q. Why do all that? Why don't you just take the amount of premium you take in, without going through that calculation? What is the underlying theory of it?

A. The premium received can't be taken as a basis in fire insurance for calculating profit and loss. The fire insurance companies write their contracts for varying periods, of years, usually one, three or five, and the premiums that they receive in any one particular year have to provide for losses which may occur in succeeding years, and that is not clear asset.

There is a liability against that for the succeeding years. It is to provide—the company has to provide, if it is a five year policy, out of this premium received in one year the indemnity for the four succeeding years, or the two succeeding years, as the case may be. It is therefore not, from [fol. 2118] the standpoint of the company, an asset, but a

large part of it is a liability which has to be set up in what is called the unearned premium reserve.

The Referee: Do you know, generally speaking, what part of that is a liability?

A. Beg pardon?

The Referee: Read the question.

(Question read by the reporter.)

A. Depending, of course, upon the contract, whether it is a one, three or five year contract. If, for example, in the case of a five year contract, the company would receive, say $100, they would have to set aside $90 of that, and the rules adopted by the companies for pro rating that, of course, depend upon the length of the contract.

Mr. Folonie:

Q. How does that compare with the method of keeping accounts of mercantile concerns, engaged in merchandising instead of indemnity contracts? How do they set up their liabilities for goods to be delivered, in their accounts?

A. Well, as a matter of bookkeeping records, they have to provide, of course, if they have contracted to buy goods some of which are to be delivered at one date and some of which are delivered at a succeeding date, they have to make provision in their books for that liability which they have incurred and payments on which are to be made at succeeding periods of delivery.

The Referee: That liability is more certain and definite and ascertainable in its character than the liability [fol. 2119] which arises on written but unearned premiums, is it not?

A. Yes, because in the case of any particular policy which the fire insurance company writes, they have to provide, not only enough in that unearned premium reserve, if they wanted to, for example, to return to the policyholder in case he wanted to cancel his policy, return the pro rata portion, or, of course, if they reinsure it—but the liability may be even greater than that, in that in that period there may be a complete loss under the policy which will take, of course, a great deal more than any premiums that any particular individual contributes.

The Referee: Mr. Gephart, in a specific instance suppose

there are outstanding unearned premiums on business written aggregating, say $100,000, or any other sum. Can you tell me whether or not there is any means of knowing the average amount of that sum which will be returned to the policyholder in the usual and normal course of business?

A. You mean in the way of returned premiums?

The Referee: I mean in the way of returned premiums.

A. I don't recall the exact figures, but that is a matter of record, and adopted by the companies; the proportionate part returned at any time of the contract to the policyholder.

Mr. Folonie:

Q. That is not the court's question. The court is asking you what percentage of the amount of unearned premium that is on a company's books at a given time will in the [fol. 2120] future be returned as returned premium, as distinguished from proceeding to the point of earning it; in other words, what proportion——

A. (Interrupting.) What cancellations?

The Referee: Yes.

A. I can't answer that question.

The Referee: Do you know whether there is any general average?

A. I have no doubt—I don't recall at this time what it is, but the companies, through their experience, know what proportion is returned.

The Referee: But you don't know what that proportion is?

A. I don't recall that now.

The Referee: Very good.

Mr. Folonie: The court will recall Mr. Froggatt's testimony on that in New York.

The Referee: I do.

Mr. Barker: And the court will also recall that Mr. Froggatt testified about many other things in New York.

The Referee: That may be admitted.

Mr. Barker: Numerous witnesses have testified it is 20 per cent, if the court desires that information.

The Referee: Proceed.

Mr. Folonie:

Q. To get at and to elaborate on the court's thought as to the relative uncertainty as to how much of this unearned premium fund will become earned and go into the company's coffers eventually, assume a case of a premium of $120 a year on a $10,000 liability, on a five year policy. [fol. 2121] When the one year had elapsed of the five years, how much of a reserve would be carried in the unearned part of that particular policy, what percentage at the end of the first year, during which it was written?

A. On a hundred dollar policy about ninety dollars would be carried in your reserve immediately. I don't recall the exact figures in the case of a $120 policy.

Q. Well, that's near enough for my purpose; 90 per cent?

A. Yes.

Q. And suppose that on that policy during the first year there had been a loss of $1,000, assume now a $10,000 liability was taken under the policy, it would go then in reduction of the indemnity to be recovered in the future to the extent of one-tenth of the whole amount. One thousand dollars we will assume, in that event, had been paid to the policyholder for his loss and nine thousand dollars of indemnity still remained. In such case, would a reserve for unearned premium be carried against that risk, or would you quit carrying an unearned figure on it?

A. You would still have to carry your reserve against your risk.

Q. Even though you had received only $120 and had paid out $1,000, you would still have to carry that reserve?

A. That is what the policyholder buys. He buys indemnity and the company must provide at all times, regardless of what particular sum he has paid in—if it has to go into surplus or capital—the policyholder must be insured at all times of protection.

[fol. 2122] Q. Is the uncertainty of the loss which will come against that fund and how much it will be, is that on the—what makes the point of distinction from the merchant who has an account for a specified amount of goods to be delivered in the future?

A. Yes, the fire insurance people never know what their losses are going to be on any particular policy.

Q. So that the amount treated as unearned, the unearned

part of the premium, may result in a surplus left in the company when they get through, or it may prove entirely inadequate to pay the losses, is that correct?

A. Quite so; quite so.

Q. And is that factor of uncertainty and speculation as to outcome an outstanding feature of the fire insurance business?

A. I don't know of any other business in the world where the risk and uncertainty is so great as in the fire insurance business; certainly greater than the life insurance.

Q. Is the basis which is used in seeking to take a ratable part of the premium depending on that proportion of the time stipulated in the contract which has elasped and that part which is still to come, under the contract, is that in your judgment a reasonably fair and accurate means of dividing the premium into earned and unearned divisions?

A. I think that it is as fair and equitable as can be arrived at under the circumstances.

Q. What, in computing against your earned premiums—I think you said incurred losses and incurred expenses. What do you mean by the terms, "incurred losses" and [fol. 2123] "incurred expenses"?

A. Your incurred losses are determined by taking the losses that have been paid out during the year, for example, and adding to them the unpaid losses at the end of a year, and subtracting from that your unpaid losses at the beginning of the succeeding year.

Q. Why take such a basis as that instead of taking the amount of the losses actually paid during the year?

A. Well, there is a distinction between your unpaid losses and your incurred losses. Your unpaid losses are losses that are known but are not yet paid. Your incurred losses are losses that may develop, and forward provision must be made in order to protect the company and assure that the indemnity will be met.

The Referee: Will you read that answer, please, Mr. Blume?

(Answer read by the reporter.)

The Referee: The incurred loss is a loss which has in fact been incurred, but the exact extent and amount of which has not yet been determined?

A. Yes.

The Referee: That is what you mean?

A. Yes, exactly.

The Referee: Precisely.

Mr. Folonie:

Q. Are the paid losses upon the current year's business, are they a part of the incurred losses for the year, or not?

A. May I have that question again?

(Question read by the reporter.)

[fol. 2124] A. Those losses that have been paid during the course of the year are taken into consideration in figuring your incurred losses, by actually counting, first, all the losses that have been paid out during the year.

The Referee: Pardon me a moment. I am not sure whether I understand. The losses which have been paid in any year, in your calculations are considered as making up a part of a total of the paid losses of that year, are they not?

Mr. Folonie: Yes, and they are also—part of the incurred losses; both. Put it in another way, to obviate any confusion——

The Referee (interrupting): I understand that.

Mr. Folonie: To just leave your formula for computing it a minute, suppose a loss occurs in the—you are undertaking to find incurred losses, now, for the year 1922. If a loss has occurred in 1921, that is the fire happened and the loss happened, but it was not paid during that year. And you paid it during 1922. Does that go into your incurred losses for 1922, or do you eliminate it? I mean, does this formula in computing 1922 include losses?

A. That is in a part of your paid losses for 1922.

Q. By your formula you eliminate it from the incurred figure when you calculate it?

A. Yes.

Q. And then those which occur during the year which have not yet been paid, those are also in your incurred figure?

A. Yes.

[fol. 2125] Q. To leave your formula, then, that is what your incurred loss figure is, then, is it?

A. Yes.

The Referee: So that the incurred losses may include a portion of the paid losses of the same year? Is that correct?

A. I should rather put it the other way, that your paid losses during the year may include some of your incurred losses for the preceding year.

The Referee: Yes, but let us put it the other way. Is the other way correct, also, that the incurred losses in a given year may include some of the paid losses of the same year?

A. That might—yes. That might be true.

The Referee: May be true either way?

A. Yes.

The Referee: Very good. Proceed.

Mr. Folonie:

Q. Now, in arriving at what is a proper profit to be made in the business, and before getting into that with any definiteness, are you familiar with the theory commonly held in the insurance business as to the necessity of a charge to care for so-called conflagrations?

A. Yes, I am familiar with the general practice on the formula that was adopted, I think, by the insurance commissioners in '21, whereby they agreed that they would make certain provisions for what was known as the conflagration cost.

Q. Now, without going into the question of what the amount and charge should be, for conflagrations within and without the state where the question arises, in your judgment is it economically sound to have some kind of a charge [fol. 2126] to meet possible conflagrations within that state and without its borders?

A. It certainly is.

Q. Tell the court why.

A. A conflagration may happen to any state. Kansas City or St. Louis may have one tomorrow. It is very proper, then, that under the theory of conflagrations that the people of Missouri should bear a part of that, but also expect the people of the other states to help in sharing that

loss, because you don't know when it is going to come to us, and just as we will expect others to help us pay those enormous conflagrations losses so that we have a right to expect other states to pay that. It wouldn't be possible for a state to bear some of those conflagration losses. California certainly could not have borne the loss of the Frisco fire. Maryland certainly couldn't have borne the Baltimore fire loss. So it would be practically impossible for that cost to be assessed upon each state.

Q. Well, take a very small territory, say the District of Columbia, where practically all its value is in the City of Washington. If a conflagration should destroy that city would it be possible to ever increase rates within that juridiction which would recoup a loss there occurring?

A. No, the cost would be prohibitive on property.

The Referee: And the conflagration loss, in the sense in which you are using it, means a loss to what extent?

A. Generally accepted as a loss over one million dollars, conflagration.

[fol. 2127] Mr. Folonie:

Q. Is that a generally accepted theory among insurance people and economists studying the subject?

A. I understand so.

Q. Now, with reference to underwriting profits of a fire insurance company, what is an underwriting profit, as you understand the term?

A. It is that sum that is arrived at by deducting from your earned premiums all of your incurred losses and your incurred expenses.

Q. Is an underwriting profit over a period of time an essential to the conduct of business of fire insurance by stock fire insurance companies?

A. It certainly is.

Q. Are you familiar with the fact that those companies also have an activity by way of investment of funds and assets in their possession and ownership?

A. I am.

Q. * * * to insure the members of the policy, in your judgment should the losses, if any are made, upon the investment activities of the company, be charged against the insuring public, or the profits, if made, upon such in-

business by way of reasonable interest return on their money eliminated by economists in calculating the profits derived from business in general, in the conduct of its activities, whether that capital be borrowed or owned capital?

A. Surely. It ought to be eliminated in all calculations, because that is one of the expenses of doing business. If individuals didn't have their own capital to put in a business, but would go out and borrow it, the interest on that capital which they borrowed would have to be charged as a liability against the business. Profit in a pure technical sense is a fund that comes to individuals in business from managerial ability, and your interest upon your capital or borrowed capital, whether it is borrowed or whether it is advanced, should be considered always as a liability in the business. Say that in a fire insurance business this capital is advanced and the policyholders, the public at large, has no right to the earnings on it; neither should they be compelled to share in any losses connected with the investment of it.

[fol. 2131] Q. Are the earnings on the investments of insurance companies by the investment of their funds any greater than would be the return if the moneys were invested and put out at interest entirely, regardless of the insurance business?

A. They are not as much, because the statute restricts the kind of investments which can be made by your insurance companies, with the idea of guaranteeing first of all absolute safe security of the investment. It is a well known fact, of course, that if you insist upon security in an investment first of all, you must be satisfied with a somewhat lower rate of interest. Therefore the very fact that insurance funds have to be invested in what may be called giltedged securities means that the owners of that capital must content themselves with a somewhat lower net return than they could secure if they were free to make their investments as an individual might.

Q. Now, have you, in your Harvard pamphlet there, any statement as to business in general as relating to the elimination of capital by way of charging it as an expense?

A. Here is a study of the Harvard University Bureau in its discussion of the net profit, and it states, among other things:

"Inasmuch as proprietor's salary, rent of owned building and interest on the net investment are included in total expense, net profit is defined as in part a return to the proprietor for the exercise of special effort and foresight in the management of the business and in part compensation for the risks incurred. Occasionally, of course, net profits, as well as net losses, are due to fortuitous circumstances. Net [fol. 2132] profit is not to be confused with total net gain or with total taxable income. Net profits in the sense of the purely residual amount that is left after meeting all established expenses, including interest on the investment, is a real measure of the effectiveness of the management of an individual enterprise."

Q. What is that pamphlet you were reading from? I will read the title. "Bulletin No. 38, Bureau of Business Research, Operating Expenses in Retail Jewelry Stores in 1922," and reading from pages 16 and 17.

A. There is another statement——

Q. What are you reading from now?

A. Bulletin No. 22, Bureau of Business Research, operating expense in retail drug stores in 1919.

"Net profit is the award that is received for assuming the risks of carrying on business, and especially for exercising good judgment in managing the business. It is not a return on investment, for that is a sort of interest on capital, included in expense. Net profit is the amount that remains after all expenses, including salary of proprietor, rent of the store, whether owned or leased, the interest both on owned and borrowed capital, has been deducted from gross profit."

Or, as I stated a moment ago, profit is to be distinguished on the one hand from interest, if we speak quite definitely in economic terms, from wages and from rent, profit being that fund that is left for that—for the manager, after he has paid all expenses of production, including the wages for his labor, including the cost of his raw material, [fol. 2133] and including the interest upon his capital whether he advances it or whether it is borrowed.

The Referee: Including also a reasonable salary for the manager?

A. That don't come in profit.

The Referee: I say, profit is the amount which is left after deducting certain other items, and those other items include a reasonable salary for the manager?

A. Yes. Manager's salary is a part of the wages, just like any other labor wage. That is, on the—that is what net profit is in terms of the technical economic statement.

Mr. Folonie:

Q. So that if you undertook to put into the receipts of a business, say the insurance business, you undertook to put into their receipts or income not only their underwriting profit but also their income, net, from investments, you would offset that by a charge for the interest for advancing that capital, which would then offset the interest charge which you put in as a credit; is that it?

A. Surely. If you should absolutely allow the policyholder to have interest upon your investments, you would have to offset that with a liability charging him with interest upon the capital used in the business.

Q. And the net result of which would be to eliminate what you put in and still leave the underwriting item as the matter for inquiry; is that correct?

A. Yes.

The Referee:

Q. Would or would not that depend upon whether or not the profits upon the invested capital equaled or exceeded or were less than the term rate of money on the same amount of capital?

A. Well, if the individuals in that case secured a profit [fol. 2134] over and above, as a total sum, greater than the *the* interest on the current rate for the capital advanced, they certainly would be entitled to that, as managers of the business, because that is profit; that is theirs.

The Referee: Mr. Blume, will you read that question?

(Question read by the reporter.)

The Referee: All right, proceed.

Mr. Folonie:

Q. Have you given any consideration to the question of whether the interest on the assets of the company which

offset the unearned premium debit, whether those earnings on that offsetting portion of the capital ought to go to the stockholders of the company or whether they ought to be credited to policyholders is arriving at the determination of whether a profit or loss on underwriting has been made?

A. Yes. I don't think any of that ought to be considered from the standpoint of the policyholders, because, first——

Q. (Interrupting.) I am speaking of stock companies, now, you understand, in my question.

A. Yes.

Q. All right, go ahead.

A. If the policyholder gives a premium, he buys a contract of indemnity. That premium becomes the property of the insurance company. They have sold indemnity and they must stand ready at all times to provide that indemnity.

Now, as I stated a moment ago, that premium that is paid by the policy holder, the company itself will probably not receive that for sixty days or more, and at the same time the company will be required to take out of its surplus and set up as reserve a sufficient fund or sufficient [fol. 2135] funds for the reinsuring of that contract, the cancellation of it, or the payment of it, if it falls due. The policyholder, in advancing this premium, and it becoming lost, so to speak, or becoming, with all the premiums being received—you couldn't identify that among all the various sums that are being invested day by day, and in any event the policyholder has no right to any earnings upon that. It practically would be impossible—with the premiums there is a flow, there is a surging back and forth all the time, from your surplus into your unearned premium reserve, and as your unearned premiums become earned they go into your surplus to be invested—the company carrying, of course, large sums of cash all the time. You couldn't identify any part of the individual policyholder's premium that he has paid at any time as an invested fund, and we are not interested in doing it, anyway.

Q. Now, suppose that this situation would arise, to illustrate this point; we will assume that the premium amounted to 1 per cent of the indemnity assumed by the company; we will suppose that upon a given group of policies in force at a given date the amount of the losses exceeded the amount of net premium income—in other words, the losses, we will say, are ten per cent of the whole amount of the indemnity

provided for—in that event, would the company in fact have any of the premiums remaining?

A. No, it would have none of the premiums remaining.

Q. Would it still have to keep a reserve and carry that as a reserve figure upon its statements for nine-tents, more or [fol. 2136] less, of the unearned portion of those premiums?

A. They certainly would.

Q. And in case of a total loss of property, then the entire premium becomes earned and the contract is terminated by the total loss and payment of it, is it not?

A. Yes.

Q. And those occur from time to time with every company, do they not? They have total losses on certain risks?

A. Certainly.

Q. Now, if the amount of those losses so paid which, we will say, exceed in that case one hundred times the premium received, must the company have recourse to its earned premiums or some other policies, or from its general surplus, to meet those matters?

A. It must pay all of those claims that fall due.

Q. They will come out of either earned premiums or surplus?

A. Yes.

Q. In other words, the unearned premiums must be kept up, no matter how many losses occur, until a total loss or maturing of the policy?

A. Yes.

The Referee:

Q. Do you mean to say, Mr. Gephart, that there is a practical difficulty amounting to an impossibility, of ascertaining the amount used by the company upon its investments or funds derived from unearned premiums?

A. Yes. Your unearned premium is flowing in in such a way that you can't tell for a particular state or for a particular individual when that particular amount of money becomes invested and is earning and the rate at which it is earning. It is a practical impossibility to decide that, because your premium reserve, your unearned premium re- [fol. 2137] serve, is at all times larger than your unearned premium account.

The Referee: Very well. Proceed.

Mr. Folonie:

Q. Now, in the event of a termination of business by a company, or a determination to cancel the business on its books, how much of the unearned premium fund would it have to pay the policyholders at that time?

A. It would have to pay the pro rata proportion on the cancellation of the policy.

Q. I mean assuming that the unearned premium on this day was a certain specified sum, the company on this day cancels all the policies it has unmatured on its books. What, if anything, would it have left of its unearned premium fund, after effecting that cancellation?

A. Nothing.

Q. Now, assuming that the company had expended, we will say, 40 per cent, more or less, by way of expense, in securing that business and handling it, would it be out of pocket that much, then, by repaying all of that to policyholders?

A. It certainly would.

Mr. Folonie: You may cross-examine.

Cross-examination by Mr. Barker:

Q. Mr. Gephart, the knowledge you have of fire insurance comes from investigations you have made?

A. Very largely so.

Q. Have you had any practical experience in the fire insurance business?

A. Neither as an agent nor as an officer of a company. [fol. 2138] Q. Have you had any connection with any fire insurance company?

A. No, no official connection.

Q. Any actual connection?

A. No.

Q. What did you mean by your statement in saying "No official connection"?

A. I have been in rather intimate contact with rating bureaus and have worked in offices as an investigator and have worked, of course, in connection with rates; not as an employe. So I have had no practical experience from the standpoint of your question.

Q. What rating bureaus have you worked in?

A. I have not worked in any rating bureaus, as an employe.

Q. I didn't say as an employe. Didn't you tell me just a moment ago you had worked in rating bureaus?

A. I have made studies in connection with the rating bureaus.

Q. Have you been in their offices?

A. Yes, in St. Louis and Columbus, Ohio, and somewhat in the New York.

Q. What were you doing in those offices?

A. Getting data upon the way in which the schedule was built up and the charges made, as a student investigating how a rate was made.

Q. So all the knowledge you have comes from that which you got from the insurance companies?

A. Yes.

Q. If their method was wrong then your knowledge would be wrong?

A. Yes.

[fol. 2139] Q. You have given no independent thought, but just blindly accepted what they told you?

A. Oh, no. I tried to think as best I can about it, as everything else.

Q. Did you accept their theories and do you accept them without any——

A. I accept the present theory of insurance rating, whether under the Dean schedule or the mercantile schedule. I think it is a scientific method.

Q. But you have no independent thought except as you get it from your schedules?

A. I think their standard of their schedules is commendable and scientific.

The Referee: Do the Dean schedule and the mercantile schedule agree in all respects?

A. No. They are on a different basis.

Mr. Folonie:

Q. Now, have you, during the time that you were writing books and publications on fire insurance, received any aid from the fire insurance companies?

A. Just what do you mean by aid?

Mr. Barker:

Q. Well, just any way.

A. I would write to them for their reports or annual reports; and that sort of aid; information aid, yes.

Q. Did you receive any allowances or bonuses or any agreement to purchase certain numbers of your books, or anything like that?

A. None whatever.

Q. When your books were written, how many would insurance companies take of them?

A. I don't know. The McMillan people were publishers. [fol. 2140] Q. You had no understanding with the insurance companies?

A. Absolutely none.

Q. Receive any gratuities of any kind from them in your work?

A. None whatever.

Q. Have you ever had any financial connection at all, directly or indirectly, with the fire insurance business, either through the National Board of Underwriters, bureaus of any kind, Western Union or any of them?

A. None whatever.

Q. Now, fire insurance rates are promulgated and put into effect for the purpose of covering the losses and allowing a reasonable profit to those who invest in the business?

Mr. Folonie: Left out expenses?

Mr. Barker: It's pretty well covered.

The Witness: Is that a question?

Mr. Barker: Yes.

The Witness: I didn't understand it to be a question. Will you read the question?

Mr. Barker: Everything I ask you is a question.

(Question read by the reporter.)

A. And expenses. Profit and expenses.

Q. Well, what I mean is, fire insurance rates are based on the theory that they take care of all losses, expenses of every kind and character, and then guarantee a reasonable profit to those who enter the business?

A. That is the assumption; the promulgating of a rate, that it will cover all expenses and include a reasonable return.

Q. And in case, for instance, of conflagrations, you spoke of conflagrations. Conflagrations in the insurance world [fol. 2141] are recognized as a helpful thing in affording a stimulus to the insurance buisness, are they not?

A. I don't think so.

Q. Have you made any investigation on that?

A. What kind of investigation?

Q. Well, reading what presidents have said?

A. Presidents of insurance companies?

Q. Yes.

A. I don't recall of having read anything that an insurance president said on that line.

Q. Well, now, as a fire insurance expert you know that conflagrations are not harmful to the companies in a financial way, are they?

A. I wouldn't agree to that no; no more so than I would agree to the fact that the fire insurance companies are unmindful of losses. They spend millions of dollars to prevent losses. They spend millions of dollars to prevent losses.

Q. And yet, notwithstanding that, losses mount each year?

A. Well, they fluctuate, running around a half a billion dollars a year. We don't make much progress in this country in reducing losses, but that is not due primarily to the fire insurance companies, I don't think.

Q. Don't you know that from 1912 to 1921 the fire losses per capita in the United States increased from two dollars to over five dollars?

A. No, I don't know that to be a fact.

Q. Well, have you just come here to testify to these things you were requested to testify to, or have you a general knowledge of this subject?

A. I have said that the fire losses of the United States, as I recall it, run around from a half a billion dollars a year on the average. I don't know whether it has increased from two to five dollars. I couldn't testify to that.

[fol. 2142] Q. Haven't you seen quotations in all the insurance magazines and the writings, of the increase per capita of fire losses in the United States from '12 to '21?

A. Not in an exact amount, no.

Q. You have no knowledge on that subject at all?

A. Not exact knowledge as to the exact amount of insurance from year to year, no.

Q. Are you familiar with the fact that the fire loss in England covering the period of ten years prior to 1923 was .67 of 1 per cent per capita?

A. I am not familiar with the fact that it was 67 or any other particular percentage. I know that the fire loss of England is much less than it is in this country, and on most of the Continent.

Q. But you don't know that the fire loss has constantly increased per capita in this country from 1912 until now it reaches more than five dollars per capita?

A. I don't know the exact amount, no.

The Referee:

Q. Do you know whether or not it has in fact increased in that period?

A. No.

Mr. Barker:

Q. You don't know that?

A. No.

Q. Who did you talk to before you came up here with reference to this case, Mr. Gephart?

A. Mr. Leahy, I believe, and Mr. Folonie.

Q. The paper which you have, did they assist you in the preparation of those?

A. These (indicating documents)?

Q. Yes.

A. No. No, I am familiar with all of these, with the exception of one or two of these to which my attention was called; but I was familiar with those.

[fol. 2143] Q. Who was your attention called to them by?

A. I think Mr. Folonie.

Q. Well, the typewritten document, did you have that?

A. This is all mine (indicating group of documents).

Q. Was that prepared in conjunction with them?

A. No.

Q. And you were not limited as to just what you would testify?

A. No.

Q. But you are testifying as an insurance expert, I take it?

A. Yes.

Q. Now, then, in fire insurance rates, when fire insurance rates are made, consideration, of course, is given to the losses which experience has shown will occur?

A. Yes.

Q. And to the expenses which experience has shown have occurred and will occur?

A. Yes.

Q. And those expenses, of course, in figuring a rate, must be reasonable expenses, or is any attention at all given to the reasonableness of expenses?

A. Any attention by whom?

Q. Rate making bodies?

A. I presume so.

Q. Well, do you know?

A. Yes.

Q. Well, what investigation do they make as to the reasonableness of expenses?

A. I don't know that they make any investigation as to the reasonableness of expenses. The expense ratios I have already testified run around 42 per cent.

[fol. 2144] Q. And that is accepted in making rates without any investigation as to its reasonableness?

A. I think so.

Q. And that simply results in fire insurance in the United States being written on what is commonly known as the cost plus basis?

A. Well, I shouldn't say that it is exactly the cost plus basis as we knew it through the war period, no.

Q. I didn't ask you anything about the war period, did I?

A. No. I wouldn't agree, then, that it is on the cost plus basis.

Q. In arriving at the rate, you take the experience to show what losses have occurred and will in all probability occur?

A. Yes.

Q. Then you take the expenses which have occurred and which in all probability will occur? Right?

A. Yes.

Q. And then you figure a reasonable profit for those engaging in the business?

A. Yes, although the term reasonable may differ.

Q. Sure. We all differ. Now, then, if no consideration is given to the reasonableness of expenses, but they are just

totaled for the purpose of arriving at a rate, that does make fire insurance on a cost plus basis, does it not?

A. I object to the term, "cost plus basis," as descriptive of what actually occurs in rate making.

Q. Yes, I know, but you can answer the question.

A. Well, I will have to say no, then.

Q. All right. You consider the losses?

A. Yes.

[fol. 2145] Q. Any consideration given as to whether or not they are reasonable or unreasonable?

A. Oh, well, perhaps so, yes.

Q. Well, are they or are they not?

A. I don't think any detailed investigation is made as to the reasonableness.

Q. They are accepted as reported, are they not?

A. Yes.

Q. All right. Expenses are accepted as reported?

A. Yes.

Q. No question about the reasonableness of losses or expenses?

A. No.

Q. Then you say that is not a cost plus system?

A. I would have to know what is in your mind as to a definition of a cost plus system before I could——

Q. (Interrupting.) Very well. Now, then if an investigation was made as to the reasonableness of expenses, and an investigation was made as to the reasonableness of losses, then you could actually figure a rate, and until then you can't, can you?

A. I think it is very pertinent at all times to inquire into the reasonableness of expenses.

Q. But you say it is not done in making rates?

A. The rate making bureau doesn't—it isn't their function.

Q. Is it anyone's function?

A. Probably the state's.

Q. Oh. Then the state may consider the reasonableness of expenses?

A. Yes.

Q. And the reasonableness of losses?

A. I think so. It is very proper for the state to inquire into any of these points.

[fol. 2146] Q. Now, then, when a conflagration occurs, premiums, of course, under this system, are increased to take care of the cost of the conflagration?

A. Yes, ought to be.

Q. Well, they are?

A. Yes.

Q. They were increased after the Frisco fire?

A. Yes.

Q. And they were increased after the Boston fire? I mean after the Baltimore fire?

A. Yes.

Q. And you know, as a student, that they were increased after the Chicago fire in '71?

A. No, I don't know.

Q. But you are sure that in all cases——

A. (Interrupting.) They ought to be.

Q. They must be?

A. They ought to be.

Q. Well, they must be?

A. I should prefer to say they ought to be.

Q. And you know that they are, do you not?

A. No.

Q. You told me you knew they were after the Frisco fire?

A. Yes.

Q. And after the Baltimore fire. Did you mean that?

A. Did I say they were?

Q. You certainly did, if I understood you right.

A. They ought to be.

Q. Well, you know that they were increased after the Frisco fire, don't you?

A. No. If you are asking for exact knowledge.

Q. And don't you know that increase is carried to this day?

A. It ought to be, and I suspect it is.

[fol. 2147] Q. All right. The Frisco fire was a $350,000,000 loss, wasn't it?

A. Some such sum.

Q. Now, the fire rate increase was 15 per cent throughout the United States?

A. Fire increase?

Q. Premiums.

A. Premiums.

Q. 15 per cent throughout the United States?

A. Yes.

Q. Tell the commissioner, please, on premiums aggregating $750,000,000 a year how long it would take that 15 per cent increase to pay for that fire.

Mr. Folonie: Object to the assumption there were any premiums in such amount at that time.

The Referee: That is a matter of calculation anyhow, is it not?

A. I should prefer to say that is a matter of calculation, if your statement is correct about $750,000,000; 15 per cent increase, that is absolutely a matter of simple calculation, how long it would take.

Mr. Barker: Do you object to giving it to me—if it is simple?

A. Well, I would have to calculate it.

Q. Well, that is your business, isn't it?

Mr. Folonie: We object to his calculating.

The Witness: I object to that.

The Referee: Mere matter of calculation. Anyone competent may do it.

Mr. Barker:

Q. Are the insurance premiums in the United States about a billion dollars a year now?

A. I don't have the exact figure as to what stock premiums amount to a year available at this moment.

[fol. 2148] Q. Any idea whether a billion is about right or not?

(Witness examines documents.)

A. Oh, I can't testify as to whether a billion is about right or not.

Q. Just say you don't know, and that is all. I am waiting till you finish looking for something there.

A. I don't know.

Q. You don't know?

A. I don't know what the premium was.

Q. Now, would you mind telling me, because I can't figure

those things as accurately as you can, what 15 per cent of a billion dollars is?

A. I suppose if I have to—I figure it as $150,000,000.

Q. Now, then, if the Frisco fire, on my assumption, was $350,000,000, how long would it take to pay that on those figures?

A. On the basis of $350,000,000 loss, to get $150,000,000 a year of course would take somewhere between two and three years to pay for it.

Q. If those rates were increased in 1906 and now extended to 1923 it would have paid for the Frisco fire how many times?

Mr. Hogsett: We object to that assumption. There isn't a single shred of evidence in the record to justify this wild-eyed assumption.

Mr. Barker: It is in evidence and true.

Mr. Hogsett: I submit there is no evidence whatever of it. The testimony in New York of some witness there was that there was an increase applied in certain parts of the country of 15 per cent for a while; but that that didn't last up to the present time and in fact only lasted a very short [fol. 2149] time. Now, Mr. General Barker makes a wild assumption that it exists up to this present moment.

Mr. Barker: And it does exist and we will prove it by this witness, if he will answer my question.

Mr. Folonie: We object, first, to the assumption that there was any such increase, and second, that it calls for an assumption which anybody is competent to make.

The Referee: Sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker: That may be good. The record is clear on it.

Q. The Frisco fire was about $350,000,000, was it not?

A. I don't know.

Q. You don't know?

A. I don't know what the loss is. I don't recall what the losses are.

Q. If insurance presidents have produced their figures

and records in this case showing that loss, you will accept it, will you, on my statement that they have?

A. If insurance presidents, capable people, would say it was that I should certainly be disposed to accept it.

Q. You told me you knew the rates were increased after the Frisco fire, did you not?

A. I said they were.

Q. Do you know whether that increase exists today?

A. No, I don't know.

Q. Tell me when it was taken off.

A. I don't know.

[fol. 2150] Q. Will you investigate and find out for me?

A. I could investigate and find out, perhaps. I don't know that I could, because it is not probable that whatever increase was put on was put on over the whole country as a whole and continued over the whole country as a whole.

Q. Who will know that?

A. I don't know.

Q. You don't know where the State of Missouri can get that information?

A. I don't know.

Q. The insurance companies know, don't they?

A. I don't think they do.

Q. Don't you think the insurance companies would know whether the increase put on in 1906 was on now or not?

A. For the particular Frisco fire, no.

Q. Then if they had a 15 per cent increase in 1906 they wouldn't know whether it was still on or not?

A. They would know how any increase that existed this year or last year, they would know how it compared with the past rate in 1915, but whether it was for the Frisco fire or for this particular state or that particular state or another state, that would have to be a matter of very great detailed inquiry.

Q. The Baltimore fire, I believe, was in 1902?

A. I don't recall.

Q. Is that about right, do you think?

A. I don't know.

Q. The increase put on after the Baltimore fire, which you have testified was put on, if I understand you right, is still on, is it not?

A. I don't know.

Q. You know it was put on after the Baltimore fire, you say?

A. I know there were some increases put on after the Baltimore fire.

[fol. 2151] Q. You don't know whether those increases are still on or not?

A. No.

Q. Now, then, is it fair, in the insurance world, and reasonable, and so accepted in the insurance world, that after the conflagration and increase is put on, as you have stated it ought to be, that it should be taken off when the conflagration is paid for, or not?

A. I should say yes. That for that particular fire, if they know when it is paid for, that it ought to be taken off; but there ought to be allowance at all times for conflagrations in your rates.

Q. What allowance do you think in a rate should be made for conflagrations?

A. Well, I should be disposed to accept as a working basis for the present time the three per cent that was agreed upon by the insurance commissioners and the insurance companies as a tentative basis of operation until we get more accurate data, and subject at all times to readjustment as the years come up and we get more accurate information.

Q. And that three per cent, then, is set aside as a conflagration reserve?

A. No, not necessarily set aside as a reserve.

Q. Well, is it figured in rates today?

A. It ought to be.

Q. Then when the three per cent is secured, is it separated into a separate fund?

A. I don't think so.

Q. What becomes of it?

A. It is merged in the general funds of the company, because when the losses occur, due to a conflagration in any city, the company don't expect, and certainly the policy-[fol. 2152] holders don't expect the company to go to a particular fund to pay those losses. The company must pay those losses, wherever they get their funds.

Q. And there is no provision, then, for setting aside and

maintaining as a separate reserve, known as the conflagration reserve, in the insurance world?

A. Not to my knowledge.

Q. Now, then, you say that for underwriting profit you figure on the theory of earned premiums and incurred losses and incurred expenses?

A. Yes.

Q. Now, there is quite a difference between earned premiums and written premiums?

A. Yes.

Q. The written premiums are invariably higher, of course, than the earned premiums?

A. Yes.

Q. So that if you make a report to a state on an earned premium theory——

A. Yes.

Q. (continuing:) You don't reflect the real premiums which you have received?

A. On the contrary, I think you do reflect the real basis upon which the state should be interested in determining the fairness and reasonableness of rates.

Q. I don't think I quite asked you that question. I said that in reporting to a state on an earned premium basis you do not reflect and report correctly to the state the true premiums received, do you?

A. You do not report in your earned premiums your written premiums, if that is what you mean.

Q. In other words, you report less premiums than you received?

A. Perhaps so.

[fol. 2153] Q. Well, not perhaps, but actually? Right?

A. Well, at the close of the year, in arriving at your earned premiums, you first of course, figure written premiums during the year and add to them the unearned premiums at the close of the preceding year, December 31st, and you subtract from that sum your unearned premium reserve at the end of that year, at the beginning of the next year; so, theoretically, it might be possible for a company with or under unusual circumstances that your earned premiums might approximate pretty closely your others.

Q. But actually they come nowhere near to the written premiums?

A. Well, generally speaking, I suppose it is true that your reported premiums are less than your written premiums for any particular year.

Q. Now, assuming that there was an ascending scale of business during those five years, the earned premium basis would not in any instance reflect at all true premiums received by the companies?

A. Well, with your increasing volume each year you will have at the beginning of your preceding year a larger and larger sum to subtract. That is to say that when you subtract your unearned premium reserves at the beginning of the current year, on an ascending scale of business, that because of your increasing volume of business is a growing and growing sum, and so it would not be as much difference as might be supposed on first thought.

The Referee: Earned premiums would exceed the written premiums only in cases where the company was doing a very rapidly declining business, would they not?

A. Yes, where a company is doing a rapidly declining business.

[fol. 2154] Mr. Barker:

Q. Now, then, on an ascending scale of business, which we are discussing, on the earned premium theory it would make quite a difference if there was a descending scale of business, and that would reflect against the company, would it not?

A. Yes.

Q. So that on an ascending scale of business the earned premium reflects in favor of the company, and on a descending scale of business during the same period it would naturally reflect against the company?

A. Depending in proportion to the rapidity of the increase and the volume of business.

Q. But as a general statement my theory is right?

A. Why, I think it is fair, as a general proposition, that the difference would be somewhat higher.

The Referee: It is now ten minutes after twelve.

Mr. Barker: I expect we'd better eat lunch now.

The Referee: We will adjourn until 1:30 o'clock.

(Whereupon an adjournment was taken until 1:30 o'clock in the afternoon of the same day, the same being Wednesday, the 19th day of December, 1923, at which time parties reconvened at the same place and the following proceedings were had:)

W. F. Gephart, recalled for further cross examination, testified further as follows:

Cross-examination (continued) by Mr. Barker:

Q. Now, Mr. Gephart, assuming that at the beginning of the period of this investigation, December 31, 1916, that there should be $100,000 in earned premiums; now, all the expenses would have been paid on those earned premiums at that time?

A. In December of 1916?

[fol. 2155] Q. Yes, beginning of the five year period.

A. No, not necessarily. At the close of the year all of the expenses would not have been paid, because you would have your expenses that—in arriving at your earned premium of that date, as of any other date, you would have the expenses that are paid during the year, and then you would have your incurred expenses at the end of the preceding year, and then you would have your unpaid expenses at the beginning of the year.

Q. Aren't the expenses all paid on earned premiums?

A. On earned premiums, no, not necessarily. When you figure your earned premium at any time.

Q. The expenses are not paid on that. What expenses are not paid on it?

A. You would have, in figuring at any time your unearned premiums——

The Referee (interrupting): Do you mean "unearned"?

A. No, the earned. Figuring your earned premium at any time, you would have, of course, to consider that year unearned premium as of that date; and then, of course, your premium reserve as of a preceding date.

Mr. Barker:

Q. Now, take your time and answer my question, after you have made the speech. Read the question, Mr. Blume.

(Question read by the reporter.)

A. My answer to that was no.

Q. What expenses are not paid on earned premiums?

A. Certain expenses in connection with the operation of the company, probably taxes that are yet to accrue.

[fol. 2156] Q. Premiums are not earned, then, are they, in those instances, if there are outstanding obligations against them?

A. Yes, they are earned, from the standpoint of the policy itself, but not from the standpoint of the company.

Q. Now, you didn't think I was talking about the policyholder, did you?

A. Well, yes.

Q. All right, then, let's start again. What is an earned premium?

A. Well, the earned premiums are obtained——

Q. (Interrupting.) I didn't ask you how they are obtained. What is an earned premium?

A. An earned premium is that part of the premium received by the company after having allowed for—making allowance for your unearned premiums.

Q. What expenses are yet charged against the company on an earned premium and not paid?

A. I don't think that any particular expense is charged against your earned premium.

Q. Well, you know that on earned premiums all expenses are paid, don't you?

A. No.

Q. Well, agent's commissions are paid?

A. Agent's commissions are advanced by the company out of their surplus, and then when the agent collects his premium he will retain his twenty five per cent or 22 per cent, as it happens to be, and send the remainder to the company.

Mr. Barker: Read the question to him. We will get it if it takes all afternoon.

[fol. 2157] The Referee: Now, just follow the question closely, Mr. Gephart.

Mr. Folonie: Yes, you can answer it by yes or no.

Mr. Barker: He notices them pretty close.

Mr. Folonie: I don't think those comments are proper.

The Witness: What was the original question again?

(Question read by the reporter, as follows:)

"Q. Well, agent's commissions are paid?"
A. Yes.

Mr. Barker:

Q. The expenses for securing the business paid?
A. Yes.
Q. The overhead expense is paid?
A. Yes.
Q. Then all expenses are paid, aren't they?
A. From the unearned premium, yes. That is, a purely earned premium, and it is ready to go into the surplus.
Q. I didn't ask you that.
A. What is it again, now? What is an earned premium?
Q. We will get it.
A. The earned premium is that part of the premium which the company has.
Q. After what?
A. After the expenses connected with the particular policy.
Q. Has been paid?
A. Have been paid.
Q. Then all expenses have been paid on earned premiums?
A. Yes.
Q. Took a long time, but we got it. Now, then, beginning in 1917, the period in question, if you had $100,000 earned premiums at the beginning of the period, all expenses have been paid against it—right?
[fol. 2158] A. Will you read that question?

(Question read by the reporter.)

A. Yes.
Q. Now, if those expenses are 42 per cent, would you figure the average, that would mean $42,000 had been paid in expenses on those $100,000 of earned premiums?
A. Yes.
Q. Now, then, on an ascending scale of business, let us assume at the end of the period, December 31, 1921, the earned premiums amounted to $200,000.

A. Yes.

Q. Now, all the expenses against those premiums had been paid in the period, had they not, between '17 and '21?

A. Yes.

Q. And let us assume that 42 per cent was the average there—that would be $84,000 that was paid on those earned premiums which will be earned in the future—I mean which will apply in the future? Right?

A. Will you state that question again, please?

Q. I will ask another question. Then the $200,000 of earned premiums at the end of the period, on an ascending scale of business, and the expenses of 42 per cent paid on that, would mean that $84,000 had been paid, expenses on those earned premiums?

A. Yes.

Q. So that in the beginning of the period, then, the effect would be that on $100,000 worth of earned premiums the expenses had been paid prior to that of $42,000, which the state got the benefit of in the five year period, would it not?

A. Yes.

[fol. 2159] Q. And at the end of the period, on an ascending scale of business, $200,000 worth of earned premiums, your $84,000 worth of expenses had been paid on it, that would be charged to the state and the state would thus lose $42,000 on that transaction, would it not?

A. I don't think it could be said to lose it.

Q. Well, I mean for rate making purposes only, of course.

A. It would be taken into consideration for rate making purposes.

Q. In other words, the state would lose to the extent of $42,000, on an ascending scale of business?

A. On the other hand——

Q. (Interrupting.) Well, is that right?

A. No, I couldn't agree with that, that it would lose; and you couldn't take any one year, because on this ascending scale of business the policyholders will receive consideration in the next year.

Q. We are talking about the state now, as a rate making body, and not one year but five years, from '17 to '21, inclusive.

A. Yes.

Q. And if the earned premiums are $100,000 in the beginning of the period——

A. Yes.

Q. —then those expenses are paid.

A. Yes.

Q. The state would naturally get the advantage of those expenses having been paid prior to the period. Now, if at the end of the period, on an ascending scale of business, they earned—the earned premiums were $200,000, those expenses of $84,000 would be paid within the period; and therefore, as a rate making body, as a rate making matter [fol. 2160] purely, the state would lose to the extent of $42,000, would it not?

A. Yes; but during the period, of course, the state is benefiting from the successive years of increasing business and of the expenses that are paid and allowed for.

Q. What you mean is, then, that given a great length of time it would all wash out?

A. Yes.

Q. But in the five year period, of course, it will not wash out?

A. It might not wash out in the extent it would in ten or fifteen or twenty years.

Q. Certainly. Now, then, what do you figure, if you do figure, is a fair underwriting return for stock fire insurance companies?

A. I should say that an underwriting profit of ten per cent, including in that the conflagration allowance.

Q That is seven per cent, and three per cent conflagration?

A. Well, I wouldn't answer it seven per cent, but taking the ten per cent to cover, because your conflagration losses will fluctuate from year to year.

Q. Have you had any occasion to investigate the actual underwriting profits of insurance companies in the United States?

A. The pure underwriting profits?

Q. Yes.

A. Rather small.

The Referee: Just a moment. What per cent did you say, Mr. Gephart, was a fair profit?

A. Ten per cent.

Mr. Barker: Including conflagrations.

Mr. Folonie: Ten per cent of what?

The Referee: Yes, ten per cent of what?

A. Not on the capital, but on the business that is done.

[fol. 2161] The Referee: Now, how do you mean that?

A. I mean ten per cent as an underwriting profit upon your basis of calculating underwriting profit, by taking your premiums, your earned premiums, subtracting from that your incurred losses and incurred expenses; not ten per cent upon the capital of the company.

Mr. Barker:

Q. Now, then, the stockholders own the company?

A. Yes.

Q. And they are primarily concerned with the profits and losses of the company?

A. Yes.

Q. The policyholder, according to your theory, has no concern about that, if the company remains solvent?

A. Yes.

Q. That is not a matter of their concern at all?

A. No.

Q. Now, then, you say a ten per cent underwriting profit on the volume of business. Let us assume that you and I and our genial friend here have a fire insurance company with a capital stock of $200,000. Now, let us assume, further, that we do ten million dollars' worth of business. Now, you would call a 10 per cent profit on the $10,000,000 worth of business, would you?

A. No, I would call 10 per cent profit upon the basis upon which an underwriting profit should be or ought to be calculated; namely, your earned premiums minus your incurred losses and incurred expenses.

Q. Then you don't mean ten per cent profit on your volume of business?

A. No, ten per cent underwriting profit upon the basis upon which an underwriting profit or interest ought to be calculated.

[fol. 2162] Q. Your judgment is that it is not proper in the insurance world to figure the underwriting profit on the volume of business alone?

A. No.

Q. But it should be figured on the earned premiums of the company?

A. Minus your incurred losses and expenses.

Q. Sure. Might you say net earned premiums, then?

A. Net underwriting profit.

Q. No, say net earned premiums?

A. No, I want to figure my percentage as my net underwriting profit.

Q. Against earned premiums?

A. Minus your incurred losses and incurred expenses.

Q. Well, all expenses of all kinds, you told me, are paid on earned premiums?

A. Well, if you figure your earned premiums correctly, they are.

Q. That's right. Then you mean that they are entitled to a ten per cent profit on the earned premiums for a given period?

A. No. As I have already stated, they are entitled to ten per cent as an underwriting profit, and which underwriting profit is your earned premium minus your incurred losses and your incurred expenses.

Q. Then ten per cent of that?

A. Yes.

Q. Then ten per cent on earned premiums is what you mean?

A. No, I don't. I don't mean that. I mean just what I said; ten per cent underwriting profit.

Q. On earned premiums?

A. No.

[fol. 2163] The Referee: After making necessary deductions, he just said, I think, general.

A. After making certain deductions.

Mr. Barker:

Q. Well, deductions are already made, or the premiums aren't earned.

A. Not necessarily.

Q. You don't understand a premium is earned when the expenses haven't been paid on it?

A. Yes, for figuring underwriting profit or loss you do. You don't simply take your earned premiums. You take

your earned premiums by deducting these incurred expenses and incurred losses.

Q. All right. Let us assume that in one year you have a volume of business of one million dollars—meaning by that the written premiums are $1,000,000. Now, let us assume that the losses are $450,000.

A. What kind of losses?

Q. Incurred or paid—suit yourself, I am not particular.

A. Both.

Q. All right; both, then. And $550,000 expenses, incurred and paid.

A. Yes.

Q. Making the losses and expenses aggregating the amount of written premiums. Then you would have no profit of any kind, would you?

A. You are not allowing there for some of your contracts being three and five year contracts against which, of course, you must set up part of your premium as unearned premium reserve.

Q. Yes, but on my statement you wouldn't have any profit at all—$450,000 and $550,000 would make a [fol. 2164] million?

A. Yes; 450 and 550 would—oh, yes, it would.

Q. $1,000,000 worth of written premiums, you wouldn't have any profit at all?

A. No.

Q. Now, then, let us assume that we have this $200,000 company, and let us take one year as an illustration——

A. But you can't take one year as an illustration when you are figuring your net underwriting profit over a period of years, because in that year you are writing three and five year contracts.

Q. Yes, I realize that, but there is a $200,000 company, and you have written premiums for $1,000,000 that year. Now, would it be your idea that you would figure the profit on that $1,000,000 worth of business, or on the $200,000 worth of capital?

A. I would figure that profit upon that portion of my million dollar premium receipt that had been earned, after having deducted my incurred expenses and my incurred losses.

Q. Now, then, assume that that figure gave you $200,000,

the amount of your capital; then the corporation earned 100 per cent that year?

A. Yes. That illustrates a point that always ought to be held in mind in connection with fire insurance companies. There is no relationship between the—necessary relationship between the amount of capital of the company and the volume of business they do. That is true in some other lines of business; in the banking business—the old Chemical National of New York has been declaring for a number of years a very high rate of profit upon a capital, but that capital is a relatively small one; was insignificant.

[fol. 2165] This capital that is advanced may be a comparatively small sum in relation to the volume of business, and, as I have already testified, this capital is not used in the business at all, and the amount at risk is what these stockholders stand liable to pay, in addition to any premiums they have collected. There capital is at risk. Their surplus is at risk, and all these premiums they have collected is at risk; so you may declare a dividend of 100 or 50 or 25 per cent and say that is profit, a profit upon capital, but when you figure that profit upon its true basis, namely, the premiums they really earn, minus those incurred expenses and losses, it reduces itself into a very moderate rate of interest or rate of profit, whichever you want to call it.

Q. And you figure that as an expert, for the sole purpose of reflecting, not the true condition, but an unnatural condition, don't you?

A. I don't think it is unnatural.

Q. You invest $100,000 in a fire stock company——

A. Yes.

Q. Now, you are entitled, you say, to earn ten per cent. That you, as a stockholder, earn ten per cent on your investment, is that a fair return to you as a stockholder?

A. I am not figuring the return from an insurance standpoint upon my capital investment. That net underwriting profit should be figured upon the basis which I have already indicated, and the very fact that all my capital is at risk, I may lose all my capital, I may even lose all the surplus, which might have gone to me in the way of dividends; your [fol. 2166] ten per cent should be the net underwriting profit to cover these two items as I have suggested.

Q. But now I am talking about the return in the way of profit to a stockholder, because that is of course—belongs to the stockholders. Now, if the stockholders receive ten per cent on the money which they invest, is that in your judgment a fair return to them, or not?

A. No. I was specifying that ten per cent as your underwriting profit.

Q. Well, is ten per cent to the stockholder on the money he invested a fair return to him, in your judgment?

A. Not necessarily, in the fire insurance business.

Q. Well, should it be 15 per cent return to the stockholder?

A. I don't care to specify any particular sum, because I am testifying as to the ten per cent as underwriting profit.

Q. To the stockholder?

A. Yes—no, the ten per cent on your underwriting profit.

Q. But now, suppose you are called upon as an expert to figure the earnings of the insurance corporation as a whole, you then figure that as against the capital, don't you?

A. Oh, no. Neither in the insurance business nor in any other line of business would you figure your profit upon your capital, no, sir, but you want to see what profit you make upon the amount of business that you do.

Q. All right. Then your theory is that if the Santa Fe Railroad Company applies for an increased rate to the in- [fol. 2167] terstate commerce commission and they show that they handle passengers and freight to the extent, for instance, of one year, to $10,000,000 they are capitalized for, say, $1,000,000, that they are entitled then to a return upon the volume of business they did, that $10,000,000, instead of against their capital stock?

Mr. Folonie: We object to assuming a case of public utilities, which are on an entirely different basis.

Mr. Barker: No, we better get into this record corn flakes and show that is more fitting in this case. We had that this morning.

The Referee: Objection overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I don't think there can be any very close comparison made between the insurance business and your railway business, from the standpoint of your capital, because your capital of the railroad business is invested in your rails and other things, in your tangible property; and your capital in the insurance company is not invested. Then, too, you always have overhanging you, as a stockholder in a fire insurance company the risk of paying an enormous sum, and if you go into the market to buy insurance stock, or when an insurance company is organized, you ordinarily don't pay $100 to the share, if it is a $100 share; you pay a minimum, in order to get your immediate surplus to build up with, and you have all of your funds at risk and you have to forego the return that you might get in other lines, not only on your capital but on your surplus, and I don't think [fol. 2168] that comparison can be made. Now, in regard to railroads, I don't think that any one basis of figuring a fair and reasonable return to the railroads, such as your original cost, assuming that your capital is that, can be accepted as final in determining a rate; no more so than reproduction cost can be established as a single measurement. You have to take several elements into consideration.

Q. What do you take into consideration?

Mr. Folonie: About railroads, now?

Mr. Barker: Yes.

A. In the case of railroads, the courts have, at various times, specified that the cost of reproduction, the present going value of your property, the original capital invested, and items such as that—your expenses connected with the organization of the public utility if it happens to be a public utility reasonably organized, and various other elements. You can't adopt any single hard and fast yardstick or rule.

The Referee: Permit me one question, Mr. Gephart. Considering the business strictly from the insurance end of it, underwriting business, what is the difference between earned profits, or net profits, I mean, and earned premium?

A. Your net profits and underwriting profit will differ from your earned premiums in that to arrive at your net underwriting profit you take your earned premiums for the given period and deduct from that your incurred expenses and your incurred losses.

The Referee: Well, now, before the premiums are earned, or when they are earned, haven't those losses and [fol. 2169] expenses all been deducted? I thought I understood you to say that, and I want to be clear about it.

A. Yes, if at the particular time of arriving at a net underwriting profit you have taken out—in the statement of the company—all of your incurred expenses and incurred losses, your net or your earned premium would be that—if it is completely and fully earned and ready to go back into the surplus of the company, of course those expenses have been taken out.

The Referee: Let us be specific now, so I may get this clear, please. You, for example, are called upon as of the date of December 31, 1923, to ascertain the net profits of a given company.

A. Yes.

The Referee: And also to ascertain the earned premiums ofthat company—the net profits for the year 1923, and the earned premiums for the year 1923. Now, using the earned premiums in the sense in which you have been using it, would there be any difference in those two amounts?

A. Strictly, no. Your net underwriting profit and your earned premiums would be the same.

Mr. Barker:

Q. Now, then, have you ever heard of any rate-making body for railroads—that you were discussing—figure on the number of dollars and cents that they received for carrying freight and passengers?

A. No, but I have, as I said a moment ago—I think you can't make any accurate and just comparison between the railroads and fire insurance companies.

[fol. 2170] Q. You think a retail jewelry store more nearly fits the situation, do you?

A. No. I offered evidence of the retail jewelry stores simply to compare costs of doing business. The expenses anywhere.

Q. This rolled oats, is that similar to the insurance business?

A. I offered testimony in that case to show that in other lines of business the expense element of 30, 40 or 50 per cent was not unusual.

Q. You didn't offer any evidence as to mortgage loan companies, I noticed.

A. No.

Q. Are you familiar with them?

A. Not familiar enough to offer any evidence as to expense of doing business.

Q. Although you are a life insurance expert, you offered no evidence on that?

A. No.

Q. You have all that, of course?

A. I haven't it available here or in my mind, no.

Q. You have investigated it?

A. Yes, at times.

Q. Now, let us assume, Mr. Gephart, that you and I together organize two corporations here in Missouri, under the laws of Missouri, and one, we organize a stock fire insurance company for $200,000. We organize a telephone company for $200,000. Let us assume that you are president of both of the companies. Now, at the end of the year, on the telephone company, after the payment of all expenses, all charges, depreciation, taxes and everything of every kind, there is left $100,000. Now, let us assume that on the fire stock insurance company, after the payment of all losses, expenses, taxes, every charge of every kind and [fol. 2171] character, there is left $100,000. Now, let us suppose that you make your report as to the earnings of the corporation to the stockholders. You would report in each instance that the corporation as a corporation had earned $100,000, or 50 per cent of the capital, would you not?

A. Under your assumptions I should have to report, as a matter of fact. That would not necessarily follow, that your insurance company is a more profitable business and would attract capital. If the fire insurance companies were so very, very profitable, then there would be capital flowing into them, because there is nothing in the laws to prevent people from organizing fire insurance companies and going into the business; and the fire insurance business is different from your telephone business because there will be contingent liabilities after that first year that the telephone company never will have.

Q. Do you think you answered my question?

A. I do.

Q. Well, now, let's see. In the telephone company, as president, you have $100,000 left?

A. Yes.

Q. The fire insurance company, you have $100,000 left. You report to your stockholders in the telephone company that the corporation has earned $100,000, do you?

A. Under your assumptions, that it is just a one year business and that you are through?

Q. Yes, sir.

A. Of course, if you have written five year policies and three year policies, there are contingent liabilities there.

Q. I realize that. We will get this first, and then the general discussion. Now, as far as your reporting earnings to [fol. 2172] the stockholders, your report would be just the same as president of each corporation?

A. Under your assumed statement of facts.

Q. Yes, sir. So that there is no difference known in the business world of figuring the earnings of a corporation, whether it be a fire insurance company or a telephone company, is there?

A. Oh, yes. If you are informed, there is a very decided difference, from the standpoint of the investor, from the people at large.

Q. I am not asking about people investing in companies. What I mean is that from the standpoint of economics and from the standpoint of accounting, there can be no difference in reporting the earnings of one corporation and another corporation, can there?

A. Why, different corporations do figure their earnings differently.

Q. All right. Let's see if they do. Take a bank corporation, with $100,000 capital stock.

A. Yes.

Q. Now, at the end of the year, after all expenses of all kinds have been paid, every charge of every kind anticipated, there is left $10,000; that represents the earnings of the corporation for that year, doesn't it?

A. In the case of a bank, we can't determine at the close of the year, only approximately what the earnings are. There may be losses and losses to be anticipated, and we may set aside funds. If in your assumption you are going to allow us to set aside funds for anticipated losses that may occur next year, bad loans, set aside for taxes and de-

preciation on the building, amortization fund for the pay-
[fol. 2173] ment of the building, and if you assume all that, then I grant you your $100,000 profit in the two companies, as a mere matter of reporting a profit, would have to be the same—but it wouldn't say anything, necessarily.

Q. I understand. Now, in your bank, at the end of a year, on a $100,000 capital, we had $10,000 left. Now, that represents the earnings of the corporation for that year, does it?

A. Earnings upon your capital?

Q. Upon anything. It represents the earnings of your corporation?

A. Yes, if figured properly, it does.

Q. Well, it is an assumed case. I can't figure for you.

A. Well, I don't know your method of figuring, either. Because when we figure banking profits we figure one way, and a railroad company another, and when we figure net underwriting profit or underwriting income profit or loss, for an insurance company, no two companies are the same, especially when you go to figuring the fire insurance company and your other corporations, so we can't agree to any statement of yours that this is profit—that this profit is the same as this, unless you will agree to all the different methods of figuring profit.

Q. All right. We have got a bank, now, and $100,000 capital, and you are president of it.

A. Yes.

Q. At the end of the year, after all charges of all kinds have been taken care of and paid, there is left $50,000 that we have. Now, that $50,000 belongs to whom?

A. Belongs to the stockholders.

Q. Stockholders. Could it be distributed by the bank to the stockholders?

[fol. 2174] A. If it has allowed for all contingencies and expenses, yes; and if a good system of accounting, and all that.

Q. Then we would return in that instance, if we cared to distribute, 50 per cent to the stockholders, of their investment?

A. Yes.

Q. All right. Now, we have got a fire stock company under the same circumstances; $100,000 capital, and at the end of the year, after all these charges you are speaking

about, reserves and everything of every kind set up, there remains $50,000. Now, then, we wish to distribute that to the stockholders. Could we distribute that?

A. If it is pure, clear underwriting profit you could distribute it.

Q. And the stockholders in that instance would receive 50 per cent of the amount which they invested in the corporation?

A. Under your assumption of the actual capital which they had invested, which might be a very small return on this risk they had taken.

Q. Oh, I realize "this risk" is horrible. Men are going broke every day. Don't you know that the Continental has paid 25 per cent cash dividends for the last 25 years?

A. That doesn't necessarily mean anything, because it is on your capital and not upon your volume of business done.

Q. But getting back to the bank and telephone company and eliminating the horrible and threatening danger, risk which is apparent as you walk along the streets everywhere, and in this room, the return to the stockholders would be just the same in each instance, would it not?

A. It might be.

[fol. 2175] Q. Well, would it be?

The Referee: In the case supposed.

Mr. Barker:

Q. In the case supposed.

A. In the case supposed, allowing for all those elements, which I think don't have any bearing at all upon the point, yes.

Q. Yes. So that there is no difference in figuring the earnings, on the statements which I have made, between the two corporations, is there?

A. There is essentially and basically a difference which I have already stated; that in risking your capital in your fire insurance company business, your contingent liability is greater than in your telephone, the banking business, or any other type of business.

Q. Let's see if it is.

The Referee: Do I understand you to mean that because of an increased risk in the fire insurance business persons

engaged in that business are entitled to a larger return than persons engaged in some other line of business?

A. Yes. I mean by that that what is sometimes called risk, interest and risk return, in addition to normal return, is perfectly justifiable in the case of the fire insurance business, as contrasted with other lines of business. Just as, for example——

The Referee (interrupting): I think I see.

Mr. Barker:

Q. Now, you and I are engaged in the telephone business. We have got to anticipate that windstorms will come up and blow down our wires, haven't we?

A. That is a very small risk.

[fol. 2176] Q. We have got to anticipate that hail and sleet will get on our wires and destroy them, haven't we?

A. That is a small one, too.

Q. But we must anticipate it?

A. Very insignificant.

Q. But should we anticipate it?

A. So small and negligible that it need not be taken into consideration.

Q. You wouldn't consider it?

A. No.

Q. Then must we consider that the equipment will deteriorate and continue to wear out, so that it must be replaced from time to time, or would we consider that?

A. Yes, you ought to set up in the business a depreciation fund of a certain amount, depending on your various kinds of material; some of it don't depreciate very rapidly.

Q. If you and I were in the railroad business, should we anticipate that great washouts will come and wash out the property?

A. No, not in figuring the profit.

Q. Should we anticipate that great wrecks might occur whereby great loss of life might ensue and we would have to pay enormous damages?

A. No, that is too small to consider.

Q. Take the farmer, as an illustration. Should the farmer, when he puts out his crop, anticipate that it might not rain and his crop might not mature?

A. No, there wouldn't be any way he could figure that risk, even if he wanted to.

Q. And he shouldn't take into consideration when he plants his crops the weather conditions at all?

A. No, he can't do that.

[fol. 2177] Q. Then he might just as well plant corn in the Sahara Desert as to plant in the fertile valley of the Mississippi?

A. No.

Q. Would you advise a farmer to plant corn in the Sahara Desert or in the Mississippi Valley, if you were giving advice?

A. The Mississippi Valley, I think, on the whole.

Q. Then you must consider the weather conditions in growing corn?

A. Not in figuring your profit on your farming.

Q. In figuring your profit on farming you don't figure on the weather conditions at all?

A. No, because you couldn't estimate it, even if you wanted to.

Q. Then why wouldn't you just as soon plant cotton in Canada? The weather hasn't anything to do with it, you say?

A. It is no use to try to figure against a certainty. You know you can't grow cotton in Canada.

Q. But then you would figure it?

A. No.

Q. Then the merchant, must he anticipate that he will have a lot of bad debts, if he does a credit business, and provide against that?

A. He knows about what the losses, if he has been in business or in that line of business where they have data upon the losses, he knows about what percentage of losses he is going to have, if he is doing a credit business.

Q. And he must figure the price of his goods on that basis?

A. If he has an absolutely exact accounting system, he would make some allowance for bad debts.

[fol. 2178] Q. The same as you do in the insurance business, except that you know more certainly than the mercantile man, don't you?

A. No, we don't know more certainly. You have your burning rate, but you don't know when a conflagration is going to occur, and you don't know how much your loss is going to fluctuate year by year, increase or decrease.

Q. Can't you take fifty years' experience in the fire insurance world and tell to a mathematical certainty what your losses will be?

A. No.

Q. Rates are based on that, though, aren't they?

A. No, sir, not on that alone.

Q. Is that considered?

A. No, not in that form.

Q. Five year period, then, better?

A. In some states they provide that the rates shall be based upon the experience through a period of five years.

Q. Would you think fifty years a fair average to figure fire losses?

A. No, not in a country like this.

Q. Would fifty years be a proper basis to figure expense of the insurance business?

A. No real basis for it, I think.

Q. Then experience is not worth much in figuring losses or expenses?

A. Oh, yes, it is worth a great deal.

Q. But it is not invaluable, you mean?

A. No, because rates are made partly on experience and partly on judgment.

Q. And in making them you anticipate every possible contingency?

A. They ought to be, in considering the rates to be made. [fol. 2179] I don't say that they are always. As a matter of fact, I don't think they are. Should take all contingencies into consideration in figuring rates, and allow or have interest on your capital, and your profits.

Q. Now, when you collect this premium in advance from your policyholder——

A. (Interrupting.) I don't understand that you collect it in advance.

Q. Well, we will inform you about that. You probably don't know much about this subject, but we will inform you about it.

Mr. Folonie: I don't think that proper. Object to it.

The Referee: Sustained. Avoid personalities, General.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker: Yes.

Q. Now, then, are insurance premiums collected in advance?

A. Fire insurance premiums?

Q. Yes.

A. No.

Q. They are not collected in advance?

A. You get your indemnity immediately when the policy is written; the company don't receive the money itself until sixty days, or sometimes longer.

Q. And in no instance——

A. (Interrupting.) Oh, I am not going to say in no instance, but what the premium might be paid at the time the policy was put in force. Of course that happens, but gen- [fol. 2180] erally speaking the company does not receive the premium until after the policy has been in force, on a vast majority of business.

Q. But it does receive it in at least many instances before the loss occurs, does it?

A. Oh, surely, ought to. In the majority of instances.

Q. Then let's see. I apply for a five year policy.

A. Yes.

Q. It will be earned by the company at the end of five years, the whole premium?

A. The net part of the premium will be earned immediately, beginning the first minute the company has written the policy.

The Referee: I don't think you listened to the question. Read the question, Mr. Blume.

(Question read by the reporter.)

The Referee: Now, that is the question. Will the whole premium be earned at the end of the five year period?

A. The premium complete as a whole will have been earned at the close of the five year period.

Mr. Barker:

Q. You prefer your language to mine?

A. I do.

Q. You know it means the same thing, don't you?

A. No, I want to get in the idea that the company begins

to earn a portion of that premium immediately the policy is in force.

Q. At the end of the five year period it has earned the entire premium?

A. Yes.

Q. Now, then, it doesn't collect the premium in advance, you tell me, from the policyholder?

A. No.

[fol. 2181] Q. It does not. When does it collect this premium on the five year policy?

A. The policyholder pays it and the company generally receives it, say sixty days—usually sixty days after it has been paid. It has been collected in advance, I agree with you, from the standpoint of the part of the five years, but from another viewpoint the company does not receive the premium until it already has the policy in force. The vast majority, on a five year policy, is in the hands of the company in advance of the indemnity having all been earned.

Q. Then it is not a safe assumption to say that fire stock insurance premiums are invariably collected in advance, is it?

A. No, because I have explained about the sixty days.

Q. Let's see if it happens this way: A takes out a policy of insurance on his property for a period of five years. He pays the agent at the time it is written or a short time thereafter the entire five year premium. The agent, in the course of time, after deducting his commission, remits the premium to the company. Now, you say that takes about sixty days, ordinarily?

A. Yes.

Q. Now, then, from that time until the end of the five year period the company has the money?

A. Yes.

Q. Now, what does it do with the money that it has thus colected in advance of its indemnity?

A. It will receive this money and part of it may go into the cash that is held by it, part of it may go into the surplus, part of it may go into the current account that is being paid out for funds, part of it will be set aside as unearned premium reserve on this policy.

[fol. 2182] Q. Now, there is a separation, then, in the company's office of these different funds you speak of?

A. There is no separation of any particular premium, as far as that is concerned—by taking the hundred dollars and dividing it up into ten here and twenty there and thirty dollars there.

Q. Then it all goes into what you call the general insurance fund?

A. From the standpoint of the receipts of the company, premiums are coming in, they know how much has to be put in your premium reserve, they are also paying claims and also sending money back to reserve. The point I wish to make is that this particular premium becomes merged with other premiums which are coming into the office every day and every hour.

Q. No separation of the funds at all?

A. No separation of this particular premium. There is a separation of the funds.

Q. What is the separation of the funds?

A. They know, for example, what is in the premium reserve as of, say, December 31st, when they make their report to the insurance commissioners.

Q. But you told me there was a separation of that fund. How is that done?

A. I said there is no separation of the particular premium.

Q. But you are speaking of the separation of the funds. I am not speaking of any particular premium. How is that separation of their funds done?

A. I don't understand what you mean by how it is done.

[fol. 2183] Q. Well, I don't either. I want to know.

A. There is a certain amount of cash, a varying amount, that is held in the office of the company or in the bank.

Q. Where does that come from?

A. From current premium receipts.

Q. What is the other fund?

A. The unearned premium reserve.

Q. Where does that come from?

A. Part of it from your surplus of the company, and part of it comes from your premium that is coming in day by day.

Q. What are the other funds?

A. Well, cash will cover all funds being paid out for expenses, agency commissions and so forth.

Q. Agency commissions are paid before they get the money.

A. I mean the expenses of settling losses and various other expenses.

Q. As a matter of fact, there is no separation of the funds at all but they are all handled alike, are they not?

A. No, I wouldn't say they are all handled alike; part held in cash and part go into investments.

Q. Well, now, in investments, assumed they make a $10,000 loan, they take that out of any fund they have? Might be surplus and might be unearned premium?

A. Oh, no. Their surplus is already—large part of it is in investment already, and they are taking out of their surplus sums to go into your unearned premium reserve.

Q. All right. Then suppose a $10,000 loan from the surplus fund is paid on Monday. What do they do with that money they get?

A. I don't understand what you mean by a $10,000 loan. Whose loan?

[fol. 2184] Q. Well, the people we are talking about is the insurance company.

A. Well, fire insurance companies don't loan money, though.

Q. Oh, that's right. They don't lend money, do they, at all?

A. They invest money.

Q. Oh, I see. I am speaking in the Missouri language. We call that lending. I will make myself clear. Now, then, an investment has been paid of $10,000 and they get the money. What do they do with that $10,000?

A. Let me understand. You mean that a $10,000 bond that they have held is paid to them?

Q. Well, I am not guaranteeing that it is a bond. I called it a loan, but you disagreed with me.

A. Well, if the $10,000 comes in as an investment they might, for example, turn around immediately and put it back in some investment; probably would, because their premiums coming in are sufficient to take care of the cash.

Q. Let us assume they couldn't find a suitable loan on Monday, what would they do with that $10,000?

A. Probably put it in their cash fund.

Q. And that would be the general fund, or some special fund?

A. No, the current cash they are carrying.

Q. Same fund that is known as the unearned premium reserve fund?

A. Oh, no.

Q. That is kept separate?

A. The unearned premium reserve is the amount that is held, of course, to mature these policies, and that is invested.

Q. Well, let us assume, then, on this Monday they got this $10,000 which is paid in on a loan which they have made, or an investment, as you call it, and they have got $10,000 [fol. 2185] in unearned premiums there in the office on the desk, together; would they deposit them in the bank in the same deposit?

A. Oh, your $10,000 that is paid——

The Referee (interrupting): Answer the question, Mr. Gephart.

A. No. They wouldn't treat them the same; no, sir.

Mr. Barker:

Q. How would they deposit each of them, then?

A. But the unearned premium doesn't exist as a cash fund.

The Referee: Answer the question asked and we will save a great deal of time, I am sure. Any explanation you desire to make may be made. Now let us have the question again.

(Question read by the reporter.)

A. They wouldn't necessarily deposit them.

Mr. Barker:

Q. Yes, might give them away, but let us assume they did deposit them, how would they do it?

A. I don't know that they would deposit, and if they did I don't know how.

Q. You are——

A. (Interrupting.) I don't know. Put that down as my answer.

Q. Don't you know that they would take that money and deposit it in their general fund in the bank and make their loans out of that?

A. Make their investments out of that.

Q. That right, isn't it?

A. There is where they get the cash to buy bonds.

Q. Is my question right or not?

A. They get the cash to buy bonds out of the money they have in bank on hand.

[fol. 2186] Q. Now, the money they have in the bank, if a loan is paid or investment paid, that goes in the bank the same way, doesn't it, unless it is used again immediately?

A. Yes.

Q. Yes, sir. So that the funds are all one general fund, isn't it?

A. No, I will not agree that the fund is all one general fund.

Q. All right then, how is it separated?

A. The cash fund is all one general fund. Your investment fund is one fund.

Q. A separate fund from the cash fund?

A. Surely, the sum that is invested in the investments of various kinds is one thing and the amount of cash on hand is another.

Q. When you invest the money and take the bond, you haven't the money?

A. No, you have the security.

Q. We are talking about the money.

A. Well, the cash, actual cash, that they have in dollars and cents is one general fund. Is that what you want me to say?

Q. Absolutely. No matter whether it comes from the payment of a loan which they have made or whether it comes in from the agency plant?

A. They don't distinguish their cash fund. It is a current bank cash fund.

Q. The capital is invested?

A. Yes.

Q. The surplus is invested?

A. No, not necessarily all the surplus.

Q. Did I say "all"?

A. You said "the surplus."

Q. And you thought I meant all?

A. What else could I think you meant?

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[fol. 2187] Mr. Folonie: We object to counsel changing his entire attitude in this case. He has never done this before.

Mr. Barker:

Q. All or part of the capital is invested?
A. All of the capital ought to be invested.
Q. And is all or part of the surplus invested?
A. The larger part of the surplus may be invested.
Q. Read the question.

(Question read by the reporter.)

A. Part of the surplus ought to be invested.
Q. You understood me to say all or part?
A. I don't want to say it all is. I want to say a part of it is invested.
Q. Part of the premium reserve invested?
A. Yes.
Q. Any distinction made between those investments?
A. Not earmarked in any way so you can say "This is premium reserve investment," and "this is another one;" not earmarked in any way.
Q. The capital——
A. (Interrupting.) They are not earmarked so you can distinguish one from the other.
Q. Are they invested in the same kind of securities?
A. No distinction made with respect to the kind of securities.
Q. The unearned premium reserve, if it is invested—is earning money, after it is invested?
A. Yes.
Q. You told Mr. Folonie that in your judgment as a student of insurance the earnings from the unearned premium reserve belong to the stockholders of the corporation?
A. Yes.

[fol. 2188] Q. Do you make a distinction, Mr. Gephart, between the earnings from the capital and the surplus and the earnings from the unearned premium reserve?
A. No, so far as their being property of the stockholders.
Q. Now, the unearned premium reserve primarily belongs to the policyholders, does it not?
A. No; no. Belongs to the stockholders.

Q. All right. Let us assume we have got a hundred dollars in the unearned premium reserve and a man wishes to cancel. Who has the primary right to it in case of cancellation, he or the company?

A. He has a right to cancellation whenever he chooses and the company must pay him whatever pro rata share, whatever the pro rata share is on the cancellation, but not the pro rata of his particular money. The contract is not to return his money. The contract is to return on his pro rata part of the premium from their funds, from their assets.

Q. But if all the policy holders canceled and wanted their money back, who has the primary right to it, the policyholder or the company?

A. To the fund itself, the policyholder is always entitled to his canceled premium return.

Q. Then he has the primary right to the unearned premium reserve, if he wishes to avail himself of it?

A. No. He has the primary right to have returned premium but the unearned premium reserve is not necessarily made up of the constituent part of his contribution that he has made in the way of a premium. Part of that in your unearned premium reserve has come out of surplus of the company and never was contributed by this particular [fol. 2189] policyholder. Part was contributed, perhaps, by some past policyholder and has become an earned premium, and therefore the surplus or profit now being taken out and put into unearned premium reserve.

Q. The unearned premiums are available first to return to the policyholder in case he desires to cancel, is that right?

A. The sums represented by the unearned premium are returnable to the policyholder when he wants cancellation.

Q. And they are kept in that fund for that purpose among others?

A. A fund is kept for that purpose.

Q. The unearned premium reserve is also available to pay fire losses, is it not?

A. Fire losses are not paid out of unearned premium reserve any more than they are paid out of the funds of the company. They don't identify them and earmark them and say, "This is something that we will use to pay fire losses." The assets of the fire insurance company are what

pay fire losses, and it doesn't make any difference to the policyholder whether the stockholder has to go down in his pocket and take some of his profit or some of his capital; and the losses cannot be said to be paid necessarily out of your unearned premium. Why, your unearned premium on a particular policy wouldn't anywhere nearly cover a particular fire loss.

Q. Then the unearned premiums are available for the payment of fire losses, are they?

A. I just explained they are not the source from which fire losses are paid.

[fol. 2190] Q. Are unearned premiums available for the payment of fire losses?

A. If it were necessary for the company to take its funds invested in securities, as represented by unearned premiums, and realize upon them, they would be available, in that case; but they don't expect to pay fire losses out of selling their securities, but to hold sufficient cash on hand to meet all ordinary obligations.

Q. Yes. We are just trying to find out how these losses are paid, and you can tell us. Now, the unearned premium reserve, among other things, is available as——

A. (Interrupting.) It is not available.

Q. (Continuing:) To the policyholder in case of cancellation?

A. It is not the unearned premium reserve that is available first to pay the policy holder for the return of his premium or to pay the fire losses itself. It is the cash on hand, and the cash on hand. There may not be a cent of that that was contributed by this particular policyholder.

Q. You understand I am not talking about any one policyholder, but about thousands and millions. Is the unearned premium reserve available to the policyholders at large?

A. Surely.

Q. In case of cancellation?

A. If it were necessary to use it. If all the policyholders should cancel, you could use all the assets of the company to pay whatever obligations it had.

Q. Well, we will start over again, now. Is the unearned premium reserve available to the policyholders in case of cancellation?

A. If it is necessary to use it it is available, but in practice it is not used as the first fund.

[fol. 2191] Q. Second. Is the unearned premium reserve available to pay losses in case losses occur?

A. If it is necessary, like any other asset of the company, it can be used; but in practice it is not used.

Q. What is an unearned premium, a liability or an asset of the corporation?

A. It is a liability from one point of view, and asset from another point of view. In technical bookkeeping, it is liability, because it is a fund that is set up for the maintenance of the continuing contracts which are to fall due.

Q. Is it an assets for the payment of losses?

A. Technically it might become so.

Q. I mean actually, is it or is it not? You, as an expert, know whether or not it is an asset for the purpose of paying losses.

A. In the practical operation, no; but it might be used as such.

Q. Well, suppose you have got, in your unearned premium reserve $100,000 in cash. All your surplus and capital invested, and losses occur, wouldn't it be available in that instance to pay losses, or would you sell your securities to pay them?

A. It would, but you are assuming a situation that don't prevail in fire insurance companies.

Q. They always have plenty of money in some other fund to pay losses?

A. The current cash that is available, together with the current receipts of premiums coming in, will take care of that, normally.

Q. But suppose in case of a great loss that didn't do it, would the unearned premium reserve be avaliable for that purpose?

A. So far as that unearned premium reserve belonged to [fol. 2192] that particular type of policy, they could not take the unearned premium reserve on policies yet to mature through actual loss or through cancellation.

Q. That is, if the premium was not earned they couldn't use it in any event to pay a loss, because it don't belong to them?

A. Technically, and correct bookkeeping, they have no right to use the unearned premium reserve.

Q. It doesn't belong to them in that sense?

A. It belongs to them as a fund.

Q. Just as a bookkeeping entry?

A. Well, in actuality, because they don't contract to return that to the policyholder. They contract to return to the policyholder a certain amount of money, either the return premium or, in case of loss, whatever indemnity he has bought, and that is why the unearned premium reserve is not the property, as such, in dollars and cents, of your policyholder.

Q. In arriving at a rate for fire insurance do you consider at all the earnings upon the unearned premium reserve?

A. No.

Q. You are familiar with life insurance, are you, Mr. Gephart?

A. Fairly so.

Q. In considering the life insurance rate is the interest earned on the premiums paid considered in arriving at life insurance rates?

A. An assumption made by life companies is that they will earn the——

The Referee (interrupting): Didn't you understand the question, Mr. Gephart?

Mr. Barker: Yes, I want that question answered.

[fol. 2193] The Referee: Read the question.

Mr. Folonie: Answer "yes" or "no," or that you don't know, and then explain.

The Referee: Certainly.

(Question read by the reporter.)

The Witness: May I make an explanation afterwards?

The Referee: Certainly.

A. Yes.

Mr. Barker:

Q. Then will you please tell the Commissioner why, when you collect premiums from fire insurance policyholders in advance and invest it and earn money on that investment, that when you collect premiums in life insurance from policyholders in advance and invest it and earn money on that investment, that in figuring the fire insurance rate you

do not consider the earnings on that investment, but do figure the earnings on the life investment?

A. There is a decided difference between the life insurance business and the fire insurance business. The life insurance companies, in determining the rate, take two elements—two different elements—into consideration; your mortality rate and your earning rate. That is, the earning upon funds. That is necessarily assumed—that is assumed to be low, three or 3-1 2 per cent. They expect to earn well over that. A fire insurance business is an entirely different contract, and the risks are entirely different; and when they contract with the property holder they agree to indemnify him for loss suffered. They also agree in the policy to return any premiums; and the risk, therefore, because of the nature of the fire insurance busi- [fol. 2194] ness, compared with the life insurance business, is entirely different. There is no such thing as a mortality table in fire insurance.

The Referee: Mr. Gephart, do not the life insurance companies also guarantee to pay a loss if it occurs, or guarantee to return premiums or a portion of it in certain instances?

A. They guarantee, of course, to pay a loss or to mature the policy. They don't guarantee to return premiums.

The Referee: Under any circumstances?

A. Well, return premium policies—they have been written, but the ordinary life insurance policy is not one where you get premiums returned.

The Referee: You think that is the distinguishing feature there that justifies the different methods of calculation employed?

A. One of the chief ones, yes, sir.

Mr. Barker:

Q. Now, in arriving at a rate for accident insurance, the earnings on the premiums are figured in making that rate, are they not?

A. I couldn't testify as to that business.

Q. You know it, don't you?

A. No, I am not presuming to testify.

Q. Have you made a study of it?

A. No, sir.

Q. You tell me you don't know that they are figured?

A. I wouldn't testify at all regarding the accident insurance business. I have made no study of it.

Q. In figuring a life insurance rate, 3-1/2 to 4 per cent is allowed the policyholder on the money which he pays in, is it not?

A. No. No one would think of earning 3-1/2 to 4 per [fol. 2195] cent as a net earning on your premiums that you pay a life insurance company. You can't figure out any such investment return as that on a life insurance premium.

Q. Well, is 3 to 3-1/2 and 4 per cent figured by the———

A. The assumed rate of earning—companies pay what is known as three or 3-1/2 per cent basis, but that is figured and assumed for the purpose of arriving at your rate; at what rate they will be able to earn upon their invested funds; not from the standpoint of the policyholder, but at what rate they will be able to earn on their invested funds.

Q. And they give the policyholder the advantage of what they figure they will earn, when they make a rate?

A. They expect to.

Q. Do they, or do they not?

A. No, they do not give the full advantage.

Q. What do you mean by full advantage?

A. Because their annual earnings always—the annual earnings are always above the calculated earnings.

Q. But the calculated earnings, they give the policyholder the advantage of that?

A. No, they don't return him anything in the way of any advantage; no advantage in that sense at all.

Q. Well, let's start over again, then. A takes out a policy with a life insurance company and he pays $100 a year annual premium. Now, then, when they get his money they invest it in some form of security, do they?

A. They make investments; and hold cash.

[fol. 2196] Q. I don't mean they invest every dollar, you know. Now, they figure 3 per cent to 3-1/2 per cent as the calculated earning on that $100, do they?

A. Not necessarily that $100.

Q. Well, all money. You know I am speaking of that one because in the illustration.

A. Well, I can't assume that. They assume they will be able to earn 3 per cent upon all the invested funds.

Q. Yes.

A. (Continuing:) And they get that from the policyholder.

Q. And in fixing a rate they anticipate they will earn 3 per cent on the invested funds?

A. Yes.

Q. And to that extent the rate is made on that basis?

A. That is one of the factors in arriving at the rate.

The Referee: The rate paid by the policyholder?

A. Yes; the life insurance premium.

Mr. Barker:

Q. Now, then, this same A, on the same date, takes out a fire insurance policy, for which he agrees to pay $100 a year for premium?

A. Yes.

Q. The company invests those premiums so secured, do they?

A. Yes.

Q. Just like the life companies. Charge the same—much the same form of investment?

A. Yes.

Q. Now, does the fire company anticipate that it will earn 3 per cent on its money which it receives from the policyholders in the same way that the life companies anticipate?

A. No, no.

Q. Do you think it is fair in fixing a life rate to allow the policyholders to benefit on the money which the company receives from them, and not allow the policyholder in the [fol. 2197] fire insurance rate to benefit on the money which they receive from him in exactly the same way?

Mr. Folonie: We object to comparison of stock fire insurance companies with mutual life insurance companies, and having mutual features, as improper.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: What is the question?

(Question read by the reporter.)

A. I do; because the businesses are quite different.

Mr. Barker:

Q. Now, Mr. Folonie injected a statement that only mutual life insurance companies do this. All stock life insurance companies do the same thing, do they?

Mr. Folonie: Mutualized, I said.

Mr. Barker:

Q. All stock life insurance companies do the same thing, don't they?

A. Not in the same way your mutual companies do, because your mutual company system premium is loaded in a way that the stock company's premium is not loaded.

Q. But in fixing the rate the same consideration is given by both companies?

A. In figuring your mortality rate plus your other minor elements, yes.

The Referee:

Q. Do you mean to say, Mr. Gephart, that stock life insurance companies do give any benefit to the policyholders of the funds—profit received from the investment of the [fol. 2198] premium?

A. Technically, no; that being the difference between your mutual company and your stock company. The stock company carries all the risk.

The Referee: But in fixing the rate, does the stock life insurance company consider as one of the factors for fixing the rate which they shall charge the return which it may receive from the investment of premiums paid it?

A. Oh, yes, it has to add to its mortality cost certain other elements, but it don't load its premium for expenses and various other items the way the stock company does—or the way the mutual company does.

Mr. Barker:

Q. But they give consideration——

Mr. Folonie (interrupting): I don't know that you have answered it very clearly so I understand it now, Mr. Gephart. The court is trying to find out whether the stock life insurance company takes into account this 3 per cent

on advanced and paid premiums or does not, like you said the mutual company did. Now, does the stock life insurance company do the same thing or not?

A. No. That is a risk that the stockholders run in your stock life insurance companies.

The Referee: Pardon me. I understand your testimony to show Mr. Gephart, that stock fire insurance companies in making the rates which it shall charge a policyholder does not take into consideration as tending to diminish that rate the profit which it may realize from the investment of the premium paid it?

A. Unearned premium reserve, yes.

The Referee: I didn't say anything at all about that.

[fol. 2199] Mr. Folonie: Well, the prepaid premiums.

The Referee: Any premiums he has at hand.

A. Yes.

The Referee: I understand you to say that stock life insurance companies, in fixing the rate which they shall charge policyholders, do take into consideration as an element tending to reduce that rate the profits which they earn from premiums which come to their hands. Is that correct?

A. No. Your stock life insurance company premium is lower than your mutual insurance, because the risk ——

The Referee: Pardon me, I am not concerned about the mutuals at all. Now, I will simplify that question. Is it true, as I have understood from your testimony, that stock fire insurance companies, in fixing the rate which they shall charge policyholders, do not reduce the rate any by reason of the profits which the companies expect to make from the investment of premiums which come to their hands?

A. Yes, sir, that is correct; that is true.

The Referee: Now, is it true that stock life insurance companies do reduce the rate which they charge policyholders for the same reason, that is, because of profit which they anticipate that they will make from the investment of premiums which come to their hands?

A. No, that is not true, because your stock fire insurance company expects to make its profit and earnings from better investments and various other elements. They take the risk, so to all intents and purposes they are in the same [fol. 2200] position as your stock fire insurance company.

The Referee: You are just talking about stock fire insurance companies?

A. Yes; stock fire insurance company is practically in the same position as your stock fire insurance company.

The Referee:

Q. Is there any difference between the stock life insurance company and the stock fire insurance company with respect to fixing rates, growing out of the profits which either company expects to make out of premiums which come to its hands?

A. No.

The Referee: Then they are on exactly the same basis in that regard?

A. Same basis.

Mr. Barker:

Q. Now, then, Mr. Gephart, stock fire insurance companies, in arriving at a rate, calculate that they can earn 3 per cent on the money which comes into their hands?

A. Fire?

Q. Stock life.

A. Some do and some don't.

Q. Well, that is the universal practice of stock life insurance companies?

A. No, I don't think so.

Q. What company doesn't do it?

A. I couldn't name them. Some on a three, and some on a 3½, and some few on a 4 per cent.

Q. But they all figure different sums as a calculated earning on the money which they receive from the policyholder?

A. Yes.

Q. Whether 3, 3½, or 4 per cent?

A. Yes.

[fol. 2291] Q. In fixing a rate on life insurance, stock life insurance companies calculate earnings which they will get at from 3 to 3½ and 4 per cent?

A. In fixing a rate?

Q. Yes.

A. No, not necessarily.

Q. I don't mean necessarily. Actually, that is done, is it not?

A. No. That is, the distinction between them and the mutual companies.

Q. Do you say that stock life insurance companies don't calculate that they can earn from 3 to 3 1/2 and 4 per cent on the money which they receive?

A. Of course, they have that in their assumption in making up the rate, but the policyholder don't get the lower rate simply because of that. It means the stock life company policyholders take the risks that are actually borne by the mutual policyholder, and therefore it is different, and therefore it is not correct to say that they take that into consideration in determining, solely, the premium to charge their policyholders.

Q. I don't care whether it is taken into consideration solely. It is a fact, is it not, that stock life insurance companies do give consideration, in fixing a life rate, on the money which they receive from the policyholders and which they invest—that is given consideration in fixing the life rate, is it not?

A. Not to the extent—primarily from the standpoint of policyholder, no.

Q. I don't care from what standpoint. Is it given consideration in fixing the rate?

A. Yes, but not in determining the premium.

[fol. 2202] Q. Well, rate and premium is the same, isn't it?

A. No. It depends—yes, I guess maybe they are the same from the life insurance company's standpoint.

Q. You know the law of the State of Missouri provides they must figure 3 per cent on that basis, do you not?

A. No, I don't know that.

Q. But you do tell the Commissioner, and there won't be any misunderstanding about this, that stock life insurance companies do give consideration, in fixing a rate, as to the earnings which they will get on the premiums they collect in advance, do they not?

A. I just testified no.

Q. You just told me, I thought, a moment ago, yes.

A. I didn't so understand your question.

Q. Well, we'll start again. Stock life insurance company collects a premium of $100 a year in advance?

A. Yes.

Q. Now, that money is loaned. Now, then, the company calculates, different companies different ways that they

can earn 3 and 3-1/2 or 4 per cent on that money, do they not?

A. Yes.

Q. And in that calculation, it is used in fixing rates, is it not?

A. Not necessarily the premiums——

Q. I didn't say premiums. I said rates.

A. Well, I don't know what a rate is in life insurance. We speak of them as premiums.

Q. Well, a rate is for a man 45 years of age, would be say $45?

A. That is a premium.

Q. That is the rate, and when he pays it is the premium. Now, they anticipate in fixing the rate, or that premium, [fol. 2203] the earnings of from 3 to 3-1/2 and 4 per cent on that money, do they not?

A. Not the stock life company.

Q. You know what a pure premium is, do you, in life insurance?

A. Yes.

Q. That is based on the anticipated earnings on this money, is it not?

A. I don't think so. Not technically true.

Q. Well, actually?

A. No, your pure premium is not dependent upon that.

Q. What is pure premium?

A. That is premium that results from your actual mortality rate.

Q. And consideration given to the earnings?

A. No.

Q. And there is a difference in mutual life companies and stock life companies on that?

A. Not in a pure premium.

Q. Is a pure premium in a stock life company the same as a pure in a mutual life?

A. As your pure premium is determined by your mortality rate, yes.

Q. Now, then, in a mutual life you say that consideration is given to the earnings upon the money that they take from the policyholder?

A. That is returned to them in the way of dividends.

Q. I am not asking about returned to them. Is it considered in arriving at a rate of premium?

Mr. Folonie: The charged rate, he means.
A. The charged rate?

Mr. Barker:

Q. Yes.
A. That they will be able to invest their funds and return to the policyholders whatever is not needed.

[fol. 2204] The Referee: Your answer is "yes," then?
A. Yes.

Mr. Barker:

Q. The stock life company anticipates but don't return?
A. Yes, sir.
Q. And that is the only difference?
A. That is the chief difference.
Mr. Barker: That is all, then, on that.
Q. Now, then, have you had occasion to investigate the operation of mortgage loan companies?
A. No.
Q. You know there are such things?
A. Yes.
Q. You have had occasion to investigate the lending of money by banks, I take it, being a banker?
A. Yes.
Q. Now, a man borrows $500 from a bank and at 6 per cent interest he would pay $30 for that loan?
A. Yes.
Q. And that is carried for a period, say, of six months or one year, and for the handling of that $500 business the bank would get $30, is that right?
A. Yes.
Q. Now, then, the mortgage loan company, that loans its money on farms—you are familiar with those companies?
A. Somewhat.
Q. Yes; lot of the life companies and stock fire companies loan their money on farms, farm securities?
A. Yes.
Q. Take a loan for $1,000 covering a period of one year, at 6 per cent, that would be $60 that they would get. Now, of that $60 do you know what it costs them to do business?
A. You are speaking now of mortgage companies?

Q. Yes.

A. No, I don't.

[fol. 2205] Q. They have a great deal more work and detail than the mere delivery of an insurance contract, do they not?

A. I don't think—I don't know, because I am not familiar with the way those companies operate.

Q. Well, a farmer wants a loan on his farm. He must first produce his abstract. You know that, don't you?

A. Yes.

Q. The company must of necessity examine the abstract—eh?

A. Yes.

Q. Then the mortgage must be prepared, eh?

A. Well, I am not familiar with the operation of loan companies.

Q. As a banker, you tell me you don't know whether a mortgage is given when a loan is made on a farm or not?

Mr. Folonie: Might be a trust deed.

The Witness: Might be other kinds of collateral; might put up Liberty Bonds as collateral.

Mr. Barker:

Q. Mortgage loan companies loan on collateral security, you understand, do you?

A. I am not testifying about mortgage loan companies. I am not familiar with them.

Q. Well, let us suppose that this company loans on the farm itself. There must first be an application, of course, or they wouldn't know the man wanted a loan, eh?

A. Yes.

Q. Now, in your application there is an appraisal of the value of a farm, you know that as a banker, don't you?

A. No. We do nothing on farm mortgage loans whatever, and I have had no occasion to look into it.

[fol. 2206] Q. And you haven't learned how farm loans are made in Missouri and elsewhere?

A. I have paid no attention to that.

Q. Let us assume that there is an application and that there is an appraisal by three disinterested farmers residing in that neighborhood that says the farm is of a

certain value, and that is presented to the loan company along with the abstract. Let us assume the abstract is examined by some attorney in the employ of the company. Let us assume that they determine to make the loan, and then in that event a trust deed or mortgage is drawn up and signed by the farmer and his wife and delivered with that abstract to the loan company, along with the application; and then a draft is made, which is delivered to the farmer. Now, the company must see that the taxes are paid or else that mortgage will be in trouble. They must see that insurance is kept on the property. Now, that is a considerable amount of detail and a great deal more detail than the mere delivery of an insurance contract, is it not?

A. I don't know that it is.

Q. Well, let's see how an insurance contract is delivered. Now, you apply for insurance on your house in St. Louis. Now, you go to the company's office or call them or they come around to see you—have you any insurance in St. Louis?

A. Property insurance?

Q. Fire insurance.

A. Yes.

Q. How did you get it?

A. Called up the agent and told him I wanted my property insured.

Q. What kind of property?

A. Dwelling house.

Q. What did he say?

A. He said he would take care of it.

[fol. 2207] Q. How much did you tell him you wanted it insured for?

A. I don't remember now.

Q. Well, something, you must have told him.

A. Well, but I don't recall whether $8,500, $9,500, $10,000, or what it was.

Q. Did you see the agent?

A. Yes.

Q. You went down to see him?

A. No, he came by the office, I suppose.

Q. Well, do you remember about this, now?

A. No, I don't remember the details, because I gave no particular attention to it.

Q. How did you get the policy?

A. I presume that the policy was written up and sent to me and later on a bill came.

Q. And you paid for it?

A. Yes.

Q. Now, did he make any investigation as to the value of it?

A. I don't know.

Q. Did your wife or anybody tell you he had been out there looking at it?

A. I don't recall.

Q. You never heard of him looking at it, at least?

A. No.

Q. Did you sign an application for this insurance?

A. I don't think so; I don't recall any.

Q. You placed your own value on it?

A. I presume so, yes.

Q. Now, then, there wasn't much work, then, in getting your policy?

A. No.

Q. Pleasant conversation in getting it; get it by mail, and pay for it?

A. Yes.

[fol. 2208] Q. You have taken out a great many fire insurance policies, haven't you?

A. No, not a great many, because I have never been a property owner.

Q. You have your personal property insured?

A. Nothing except an automobile.

Q. How did you get that?

A. In the same way.

Q. Same way. Who put the value on your car?

A. Well, they knew when the car was purchased and they made the sale price of the car—knew the sale price.

Q. How about the value on your car?

A. The sale price. They knew what it was.

Q. I say, how about the value on your car?

A. I told them, I suppose, what the car cost.

Q. You put the value on it, then?

A. I put the cost price on it.

Q. You put the insurance value—the amount for which it was written, did you?

A. No, I don't say that, because in automobile insurance, if I understand that, from year to year as the car grows older they have regular tables by which your insurance value decreases, year by year.

Q. Then did you give them the value or did you not?

A. I didn't—I gave them the original cost price when I got the car.

Q. That is, you told them how much you paid for it?

A. Yes.

Q. How long have you owned that car?

A. Two and a half or three years, I think.

Q. How long has your first policy—how long was your first policy of insurance for, one year?

A. Yes.

[fol. 2209] Q. At the end of that year did they renew it?

A. At a lower rate—or at the lower amount. I don't recall what the amount was.

Q. They renewed your policy, though?

A. Yes.

Q. And that was at a lower valuation?

A. Yes.

Q. Then at the end of the next year did you renew it?

A. Yes.

Q. Was that a lower valuation?

A. I understand so.

Q. Have you got those policies?

A. Yes.

Q. Do you know they were a lower valuation?

A. No. I don't know that I ever read them.

The Referee: We will take a ten minute recess here, gentlemen.

(Which was accordingly done, after which the following proceedings were had):

Mr. Barker (continuing cross-examination):

Q. Have you had occasion, Mr. Gephart, in studying this fire insurance question, to figure the underwriting profits of fire insurance companies over a given number of years in the United States?

A. Not recently, no.

Q. Well, you have made a study of that, have you not, at some time or other?

A. I recall years ago having looked into it.

Q. What underwriting profit did you find, covering a period of years, that the fire stock companies had actually made in the United States?

A. I couldn't testify on a period of years. I know that sometimes they make 1 per cent, 2 per cent, and sometimes, in some states, nothing. Pure underwriting profit.

[fol. 2210] Q. Now, isn't it safe to say that on a pure underwriting profit that for the last ten years the stock fire companies of the United States have not averaged 1 per cent underwriting profit?

A. I don't know whether that is safe to say.

Q. Well, you have never heard, over a period of years, of fire stock companies making any more than 1 per cent, have you?

A. I don't recall.

Q. If it is reported in the insurance journals that for a twenty year period, from 1900 to 1920, the underwriting profit of fire insurance companies in the United States was less than 1 per cent, would you think that was about right?

A. I think so—if it is reported in reputable insurance journals.

Q. The underwriting profit is a very small profit, as shown by the insurance companies, is it not?

A. I understand so.

Q. If insurance companies can build up large capital and reserve and pay enormous dividends to their stockholders on 1 per cent underwriting profit, covering a period of years, why do you tell the Commissioner that they ought to have 10 per cent?

Mr. Folonie: We object to assuming any such thing as ever happened.

The Referee: Objection overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: What is the question?

(Question read by the reporter.)

[fol. 2211] A. Because 10 per cent seems to me to be a fair underwriting profit for the business in which they are engaged.

Mr. Barker:

Q. If it be a fact that they have earned less than 1 per cent?

A. I don't know that it is a fact.

Q. Well, if it is a fact, would you still say that?

A. Yes.

Q. Then if it should be a fact, on the basis of assumption, that they have earned less than 1 per cent, you think that profit sould be increased ten times?

A. Yes.

Q. Well, why not say twenty times?

A. Because I think 10 per cent represents a fair return for the risk to which the stockholders are subjected in the fire insurance business.

Q. Will you make an investigation, as you are engaged in this business, and file with your testimony a statement showing the underwriting profit of all the stock fire insurance companies of the United States in this period in question, '17, '18, '19, '20 and '21, and attach it to your testimony for me? You have those figures, haven't you?

A. I can get them, I suppose.

Q. Will you attach it to your testimony—mail it to the stenographer?

A. If the Commissioner requests me and orders me to do so, I will.

Q. I am asking you to do so.

A. I will not do that. I will not undertake to do that unless there is some very good reason for doing it.

[Fol. 2212] Q. Well, we think there is. I am asking it in view of the fact that you now testify that you think 10 per cent is a fair profit. Therefore, I wish you would show what the profit was during those years.

Mr. Folonie: We object to burdening this witness with the necessity of making such extensive researches to find a subject for opposing counsel.

The Referee: There is no matter before the referee.

Mr. Barker: I just asked him to do it.

The Witness: I will not do it.

Mr. Barker:

Q. You do know that the underwriting profit has been very small in the United States for the last twenty years, do you not?

A. I don't know that.

Q. Don't know that?

A. No.

Q. Have you ever seen a statement of the underwriting profit of the insurance companies for any recent period of time—any given period of time?

A. I don't recall now any particular statement for a particular given period of years, for a particular number of companies.

Q. If you are not familiar with what the companies have been making in the past, how do you base your conclusion now that they should have 10 per cent?

A. Because that seems to me to be a fair return, and I am refusing to testify on those other matters simply because I don't now recall those exact facts.

Q. Well, if you had made an investigation as to what their underwriting profits were, wouldn't you be in a better [fol. 2213] position to say now what is or what is not a reasonable underwriting profit?

A. No. There would have to be a collateral investigation of many other points, and ten per cent seems to me to be fair.

Q. Now, if, during the period in question, it should develop that the companies had paid large dividends to their stockholders on an underwriting profit of less than 1 per cent, would you then change your idea any?

A. No, because dividends are paid upon capital.

Q. That is the only way a dividend can be paid, is it not?

A. Yes.

Q. Now, then, is there a difference, in your judgment, Mr. Gephart, between profits and earnings?

A. Yes.

Q. What is the difference between profits and earnings?

A. Well, you may have your gross earnings, from which several elements are deducted, and you may have your, in some businesses, your net profit—may have some elements deducted before you arrive at a pure net profit—I mean

have net earnings from which some elements may be deducted before you have a pure net profit.

Q. Now, I only want to use the words earnings and profits. What is the difference between the word "earnings" and "profits," as figured as against a corporation?

The Referee: Do you mean, General, may I ask, net earnings——

Mr. Barker: No, just earnings and profits.

A. There are a great variety of differences, because your earnings don't allow for certain other elements, contin- [fol. 2214] gencies of one kind and another, and setting up various sorts of funds that may be set up before you arrive at what the corporation may call a net profit, which can be distributed to your stockholders. In banks, for example, we are earning 14 or 16 or 20 per cent, and acquiring for the year a profit, we will say, of 10 or 12 per cent.

Q. Then earnings, as I understand it, represent the actual sum of money which is received by the corporation at the end of a given period?

A. That might be a fair definition.

Q. Now, a profit represents the sum which is received from the business as a whole, that is a fair definition of profit, is it not?

A. No, I think not.

Q. What is a fair definition of profit?

A. That part of your net earnings which, in the judgment of the corporation management and managers, is safe to set up as net profit or distribute.

Q. Then you think that it is the profit that is distributed, and not the earnings of a corporation?

A. The profits come out of your earnings, and they are what should be distributed.

Q. Well, now then, on your method of figuring profits by the fire insurance company——

Mr. Folonie (interrupting): Just a minute. He said one time "which are distributed" and another time "which may be distributed." Do you want to make any explanation about which it should be?

Mr. Barker: I wish Mr. Folonie wouldn't interrupt this witness. We have the right of cross examination.

[fol. 2215] Mr. Folonie: All right, if you object to my interrupting, I beg your pardon.

Mr. Barker: Every time I get into a vital point here, you make some statement.

Mr. Folonie: Well, I haven't seen you at a vital point yet, since we started the lawsuit.

Mr. Barker: If you could see one, you would have.

The Referee: Proceed, gentlemen.

Mr. Barker:

Q. Now, figuring—your method of figuring profits of fire stock insurance companies, which you stated this morning, and without enlarging on that any more, that represents the profits of the corporation, does it not, as you have stated your idea of arriving at a profit?

A. Yes.

Q. Now, when that profit is determined, then if you want to consider the earnings of the corporation you apply that profit as against the capital, and that gives you the earnings of the corporation, does it not?

A. Not necessarily, no.

Q. Well, let's see. Let us assume that on your method of figuring this morning, the—without going into that any more—that there is left $100,000, after all charges have been taken care of, as you have provided. Now, on your method of figuring that is the profit of the corporation, as you told me this morning; is that right?

A. The $100,000 would represent, according to my method of figuring, the underwriting income or profit, part of which may be distributed or may not be distributed.

[fol. 2216] Q. I am not caring about the distribution, but the $100,000 would represent the underwriting profit, as you see it?

A. Yes.

Q. Now, if you wanted to determine how much the corporation, as a corporation, had earned, then you would apply the $100,000 profit as against the capital, would you not?

A. To arrive at the percentage?

Q. Of earnings of the corporation.

A. No. You could consider that $100,000 from two viewpoints: first, upon your volume of business done, which is

the more accurate method, and when you go to arrive at a percentage upon capital, you would take your capital.

Q. Yes. Well, now, then, on your method of figuring, we have $100,000.

A. Yes.

Q. Which you call profit?

A. Yes.

Q. Now, then, if you were advised to inform the stockholders as to the earnings of the corporation for that year, you would inform them that they had earned $100,000 on their capital, would you not?

A. If I were talking about capital, yes; $100,000 on their capital or so much per cent, and so much less per cent upon the volume of business done.

Q. That's right. The profit which you first have comes from the volume of business?

A. That is the profit.

Q. On the business as a whole, you mean, don't you?

A. Yes, profit comes, in fire insurance, indirectly out of your volume of business; and arrived at by the methods which I described this morning.

[fol. 2217] Q. When you reach that result you have the profits of the corporation, haven't you?

A. Yes, from one viewpoint.

Q. Yes, sir. Then if you want to make a report as to the earnings of the corporation, you must apply that profit as against the capital to get the earnings of the corporation?

A. Not necessarily against your capital. You can report to your corporation so much earnings on your capital invested, so much earnings upon our volume of business done.

Q. Of course, it can be in many ways; but what I mean is, if you have arrived at a $100,000 profit, according to your method of figuring, and the company has a capital stock, then you must figure your profit as against your capital stock to give you the earnings of the corporation, on the capital stock—the earnings on the capital stock?

A. Part of that, however, would not be declared as dividends. Part of it will go into surplus.

Q. Well, I didn't speak about declaring dividends, did I? Having once reached your profits on your volume of business, as you have detailed, and that amounts to $100,000,

then if you have $100,000 capital, and you want to advise your stockholders as to the earnings, on the money which they have invested, $100,000, you would report that this profit of $100,000 makes them an earning of 100 per cent on the capital?

A. No, not necessarily, because those stockholders will also have some surplus as part of the funds which they have at risk.

[fol. 2218] Q. These stockholders wouldn't have but $100,000 invested?

A. Why wouldn't they? They would have all the passed dividends that they didn't take invested in the business.

Q. But we are assuming for the purpose of this question that they have invested only $100,000?

A. They have no surplus, then.

Q. That's right.

Mr. Folonie: Then they never did any business.

The Witness: They couldn't do business.

Mr. Barker: I am glad Mr. Folonie told you that. You might not have thought of it. Just listen to him and he will keep you pretty well posted.

Q. Now, then, Mr. Gephart, $100,000 capital—and forgetting Mr. Folonie's suggestion—$100,000 profit, figured on the method of which you have just finished telling me, represents an earning of the corporation of 100 per cent on the capital, does it not?

A. 100 per cent on the capital, if that is to be taken as the basis; which is incorrect.

Q. Oh, I understand that everything that the state does is incorrect, but you are not here to pass on that. We have a commissioner for that. I wouldn't want to leave it to you, you understand. Now, Mr. Gephart, do you know anything about the investments of fire stock insurance companies—their method of investments?

A. Very little.

Q. Very little. Your study hasn't taken you into the investment field very much?

A. I know that the state laws prescribe certain funds in which they must be invested, and a safe security, and [fol. 2219] regulations thrown about the investment of those funds.

Q. Then if they invest in speculative industrial stocks that would be in violation of the law, as you understand it?

A. There are certain prescribed investments—kinds of securities, in which they can invest.

Q. Are you qualifying as to the laws of the country with reference to investments of fire insurance corporations?

A. Yes, the insurance corporations.

Q. Yes. What is the Missouri law with reference to fire insurance investments?

A. State and municipal securities are among some of the investments.

Q. How is that?

A. State and municipal securities are permitted, and in general the same type of investments that is permitted, to savings banks and building and loan associations.

Q. Does that mean stock in industrial corporations?

A. No. The New York law prevents the life stock companies from investing in stocks of corporations.

Q. And fire companies, too?

A. I understand so.

Q. So that a fire insurance company can't, as you understand the law, invest in industrial securities?

A. I should not say that is true in all states.

Q. But the laws of the state which you are familiar with, with those laws that is true, is it?

A. Yes, that insurance investments must not be in industrial stocks.

Q. Because that is recognized as speculative, more or less?

A. Hazardous, more or less.

[fol. 2220] Q. Now, as an insurance man you would say that the officers of a corporation wouldn't have the right to invest their funds any way they saw fit?

A. Any way they saw fit, insofar as the state law regulates their investments.

Q. But in the absence of any law?

A. Invest them as they please.

Q. Invest them as they please. Wild cat oil wells, for instance?

A. Those investments are regulated by the laws of the state and by the Superintendent or Commissioner of Insurance.

Q. But you said that in the absence of states which had laws they could invest them as they saw fit?

A. As a legal right, they would have a right; but as a moral matter, quite different.

Q. As a moral matter, what would you say about the right of the officers to invest funds as they saw fit?

A. Use the greatest precaution and invest in the very safest possible kind of securities.

Q. But the policyholder has no concern about that?

A. Not under his contract, no.

Q. And would make no difference to him, but would be a matter controlled solely by the managers of the corporation?

A. If the law provides when the funds of a company are impaired, then your insurance commissioner would have the right to interfere with the operation of the company and to interfere with their investments.

Q. Then if improper investments were made it might affect the policyholder, as far as the solvency of the company is concerned?

A. It would be possible.

[fol. 2221] Q. And to that extent the policyholder should be considered?

A. In a moral obligation, yes.

Q. But not a legal obligation?

A. No, because—except insofar as the laws provide for the supervision of the investments, under the law, by the insurance commissioner.

Q. Now, then, Mr. Gephart, are you familiar with the method of fire stock companies in acquiring business through the agency plant?

A. Yes, in general.

Q. Now, the agent receives a commission, you understand?

A. Yes.

Q. For securing the business?

A. Yes.

Q. Now, then, take in the City of St. Louis, if it should develop and if it has developed that the agents in St. Louis receive a higher commission than agents in any other part of the state, would you think that was a proper method of conducting the business in the state?

A. St. Louis, I believe, is one of the excepted cities; a fact that has grown up and has a long historical history behind it, and it is a condition which has to be confronted in the business of fire insurance.

Q. Now, what is an excepted city?

A. An excepted city is one that is not governed by the regular commissions agreed upon by the board companies.

Q. Now, who excepts the city, as such?

A. That is a matter of historical development, and the companies are free to pay a higher commission in those cities than in the cities that are governed by the regular board rules.

[fol. 2222] Q. Aren't the companies free to pay any commission any place at any time that they desire?

A. Not where they are doing business in the classified cities, where they have agreed upon a rate of commission.

Q. But if they agree on a higher rate, they can pay it, can they?

A. In those excepted cities, if the company wishes to pay a higher rate than they do in some other city, in that case they can.

Q. And it is the company's business entirely as to what commissions they pay?

A. That is a condition over which the company has no direct control.

Q. Could the companies agree to pay the same commission in Kansas City that they pay in St. Louis?

A. I don't think that Kansas City is one of the excepted cities.

Q. But if the companies agreed to pay the same commission here, they could pay it? Nothing to prevent them, is there?

A. Except the agreement they have entered into as companies, with each other, to pay the regular.

The Referee: Will you read that question, Mr. Blume?

(Question and answer read by the reporter.)

The Witness: Yes. Your question is, what is there to prevent it?

Mr. Barker: Yes.

A. Their agreement with other companies to pay a particular commission in other than excepted cities.

Q. Well, if all the companies in all the United States agreed among themselves to pay the same commission in [fol. 2223] Kansas City they paid in St. Louis, that old agreement would be wiped out, and could they then do it?

A. I understand so.

Q. Nothing to prevent it, would there be?

A. I don't know of anything.

Q. The matter of paying commissions is entirely up to the companies, is it not?

A. Yes.

Q. Now, then, can you understand why commissions should be paid higher in one part of the state than in any other part of the state?

A. No.

Q. Give any reason for it?

A. Nothing, except the historical development to which I have already referred. There is no basic reason, as I know, why the agents in Kansas City should be paid a lower commission than the agent in St. Louis.

Q. Then it is just simply an agreement between the companies?

A. As I understand it, yes.

Q. Do they get—which they could change any time they desired?

A. As I understand it, yes.

Q. Are you familiar with what is commonly known as reinsurance, Mr. Gephart?

A. Yes, in a general way.

Q. Now, the companies usually assume or cede, which—more insurance? Do companies usually cede or assume more insurance?

A. The American companies in general assume more insurance than they reinsure. The German companies, before the war, were strictly reinsurance companies, many of them.

[fol. 2224] All insurance companies cede considerable more than they assume, do they not?

A. I wouldn't say all of them.

Q. Most of them?

A. I wouldn't want to testify most of them. Some of them specialize in the reinsurance business.

Q. In reinsurance there is an extra cost and extra effort in handling it, is there not?

A. I don't know what the extra cost.

Q. Is there not an extra cost in handling reinsurance?

A. May be a very slight one; there is also a saving.

Q. Now is there a saving?

A. The company that gets the business don't have to pay a commission—the high commissions that the original company paid, to get the business. It gets it in large volume.

Q. And thereby save the expense of getting it?

A. Save some of the expense of it.

Q. Now, then, what is the added cost or charge for reinsurance?

A. I don't know.

Q. Well, let's see. A company in Kansas City takes a $50,000 risk. It desires to cede $40,000 of it to four different companies, $10,000 in each company. Now, the company acquiring the business cedes to company A, $10,000, to company B $10,000, company C $10,000, and company D $10,000; and they all have their books and overhead and their other expense for looking after that business, do they not, and at the same time the initial company has the same thing?

A. Yes.

Q. That is a duplication, at least, is it not?

A. Somewhat.

[fol. 2225] Q. And that costs money?

A. Yes.

Q. And to that extent it is an extra expense, is it not?

A. Yes, in a way.

Q. Now, it has been estimated by Mr. Richards, formerly president of the National Board of Underwriters, and in the Louisville Insurance Field, that the extra cost of reinsurance is about 4½ per cent. Would that seem about right to you?

A. I don't know.

Mr. Folonie: Object to the form of the question, purporting to recite the theory of somebody or other that is not in the record.

The Referee: Overruled.

Q. Well, now, what funds do you mean?

A. Loaned funds, and when we speak of the rate of interest, whether established by law or not, as we commonly speak of it, 6 per cent.

[fol. 2228] Q. What funds of the company do you mean there?

A. I mean the funds which they have which are used as the basis in determining this—your underwriting profit; your 6 per cent upon your earned premiums.

Q. Well, wait a minute. I understand you to say that 10 per cent upon the earned premiums would constitute a fair return.

A. Yes.

Q. Very good. Now, then, what elements do you take into consideration in reaching that figure of 10 per cent?

A. Three elements. First the ordinary interest rate, as we speak of it. Second, the risk interest rate.

Q. Wait a minute. Why do you take the ordinary interest rate into consideration?

A. Because the capital that is at risk is at all times entitled to, we think, the ordinary interest of 6 per cent.

Q. You mean the capital invested in the company?

A. Not only the capital invested by the company in the way of stock, but their surplus and funds which they have at risks in the business.

The Referee:

Q. That is, the capital and the surplus?

A. Yes.

Q. So you consider 6 per cent on the amount of its capital and surplus?

A. No.

Q. As a part of the 10 per cent?

A. 10 per cent—I refer to that as an underwriting profit for the year.

Q. Well, in getting at that, now, I just want to be sure I understand your meaning. Do you mean you consider 6 per cent on the amount of money which each company [fol. 2229] actually has invested, namely capital and surplus?

A. No. I testified to the basis that that 10 per cent should be, on the underwriting income which is at risk; which they stand a chance of having to pay.

Q. Then you consider the 6 per cent on the earned premiums?

A. Yes, on the earned premium.

Q. Then you would consider 6 per cent on the earned premium as one factor in arriving at your 10 per cent?

A. Plus your 3 or 4 per cent for your conflagration hazard.

Q. And those two items make up the total amount of 10 per cent?

A. Yes.

Q. Now, another question that I wish you would enlighten me on: The necessity for a fair return in the insurance business necessarily exists because there must be some inducement for capital to go into that particular line of effort, of course?

A. Yes.

Q. The incentive is profit which the investor expects to reap?

A. Yes.

Q. And in order that the investors may continue to invest and the business may continue to exist, there must be a reasonable return to the investors?

A. Yes.

Q. Now, what difference does it make whether you calculate your return to the investor on this basis or that, if he gets the same amount of money, no matter what the basis? In other words, what difference does it make whether you calculate your return upon the amount of earned premiums or upon the amount of the capital? And I speak now of the money invested in capital stock—or upon the amount of the capital and surplus, or other basis? Isn't [fol. 2230] the final, ultimate test the amount of money that the stockholder gets out of his investment?

A. No, I think not, because, as I have already testified, the capital of the volume of business and the obligation of the stockholder are entirely different things. He is obligated by the contract of insurance to idemnify——

Q. (Interrupting.) I recall that, but this is what I have in mind—I probably haven't made my meaning clear. Sup-

pose you have $50,000 invested in a given stock fire insurance company. The inducement to invest your money, of course, was the hope of profit?

A. Yes.

Q. Now, then, if you get 10 per cent or 20 per cent or any other—what you please—on that investment, year by year, assuming that the return is sufficient and satisfactory, say 20 per cent, for example, to put it beyond dispute, what difference does it make to you whether the number of dollars which you get is determined by calculating on earned premiums or capital and surplus, if you get the same amount of money in each instance?

A. If you could guarantee to the stockholder of fire insurance companies, that he was guaranteed this 10 per cent on all his capital, through a long period of years, and that he would get it without any shadow of doubt, I don't think it would make any difference; but all the while you are subjecting him to the risk of having to pay out large sums some year, which will take all of his profits for past five or six or ten years.

[fol. 2231] Q. That is true in all business, is it not?

A. I don't think it is as true in most other business as in the fire insurance.

Q. Well, then, that is a difference of degree and not of character?

A. Well, real difference. The public utilities, theoretically, are assured of a certain fair return.

Q. But the point I have in mind is this, and that doesn't seem to me quite to touch home to what I have in mind. If the stockholder in fact, through a term of years, does in fact get the same dividend on the money he has invested, say 20 per cent, does it make any difference as to his willingness to remain with his money invested or to invest other money whether that dividend is calculated upon one basis or another?

A. Theoretically, no; if he could be assured of that.

Q. Well, whether he can be assured of it or not, does it make any difference?

A. Yes, because the risk he won't get it will prevent capital from flowing into the business.

Q. Isn't the risk just as great when you calculate on earned premiums as when you calculate on capital stock?

A. No, I don't think so.

Q. Or capital stock and surplus?

A. No, I don't think so.

Q. Is the risk diminished by the method of calculation employed in determining profits?

A. Not exactly the risk, but the whole basis of calculating, not only of insurance but in other businesses, you want to [fol. 2232] know what profit you are making upon the volume of business you are doing, not upon the small amount of capital you may have invested in it.

Q. The method of calculating the amount of the profits doesn't affect the risk of the business in any sense, does it?

A. No, but it is a risky business and therefore your profit ought to be higher.

Q. Well, that is a different matter wholly. What difference would it make to the stockholder whether he got 10 per cent on earned premiums or 20 per cent on capital stock, if the volume of capital stock was just exactly half of the earned premium?

A. If your volume of capital stock should be preserved just exactly in ratio to your volume of business, and if he should be guaranteed this return, I don't think it would make any difference, theoretically.

Q. Well, assume that. If your volume of capital stock is just exactly half of the amount of earned premiums, this year, we will say for example, it makes no difference to the stockholder, of course, whether he gets 10 per cent on earned premiums or 20 per cent on capital stock, does it?

A. Not if your ratio is going to continue.

Q. Well, suppose the ratio is not going to continue. It fluctuates and in one instance may be above and in another below the normal.

A. It might.

Q. Take a large capital stock and assume a falling off in earned premiums, the dividends would be less than the dividend he had formerly got.

A. Yes.

[fol. 2233] Q. A large volume of earned premiums and smaller capital stock, the dividends would be larger, of course.

A. Yes.

The Referee: That is all.

Redirect examination by Mr. Folonie:

Q. Mr. Gephart, if a man buys bread for four cents a loaf and he sells it for three, he can't make any money, no matter whether he figures it on capital stock or capital and surplus or volume, can he?

A. No.

Mr. Barker: We object to that because the answer is so obvious, and this witness has refused to make any calculations for me. I object to him making any calculations for Mr. Folonie, if he can't make any for me.

The Referee: Overruled.

(To which action and ruling of the referee, defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Folonie:

Q. In any business, not only the fire insurance but any other business, in order to derive a profit from the conduct of the business, must the price at which the product is sold be larger than the cost of the product to the person handling it and the expense of handling it, for him to have a profit?

A. Surely. Your profit must always be figured on the total cost of the——

Q. (Interrupting.) Then after you have derived an excess over its entire cost to you, then after having derived such amount you can calculate it against whatever you like, if you have got it?

A. Yes.

Q. If you haven't received it, you can't calculate it against anything?

A. No.

[fol. 2234] Q. And do you see any essential difference in these two methods that the General and I have been talk-

ing about, that is, one in figuring it on volume of earned premiums, and the other figuring it against capital? Do you see any difference in whether you are looking at it as relates to the dealings with the purchaser or policyholder, or whether you are viewing it with relation to the effect on the stockholder?

A. The effect in connection with the stockholder.

Q. Do you recognize the validity of the basis of looking at fire losses by considering them on the basis of per capita?

A. No, because that is frequently misleading.

Q. Why?

A. Over a series of years your per capita fire losses may decrease or increase, due to the fact that the purchasing power of money has changed. There may not be, for example, over a ten year period, any actual reduction in property loss if you were to measure it in cubical contents or tons, but yet if you measure it in the dollar there has been a very marked change. For example, I believe the present price level now is about 154 as compared with 1913. Well, that means if you had 100 million dollars' worth of losses in 1913 and should have the same property loss today you wouldn't call it 100 million. You would call it 150 million, because the value of the dollar has changed. Likewise, when you go into a period of a falling price level your fire losses apparently decrease, when as a matter of fact it hasn't decreased at all.

[fol. 2235] Q. Counsel asked you about whether, if you figured the expenses incurred and the losses incurred and then figured a profit in addition, whether that was not in fact a cost plus system. Suppose that, after making such a calculation and charging the rate, you in fact lost money by applying that rate, would you then have a cost plus or a cost minus system?

A. That would result, of course, in a cost minus.

Q. The cost plus system, as the term has been used in recent years, contemplates a guaranteed profit above the cost, does it not?

A. Yes.

Q. And was it that distinction, that the profit of an insurance company was not guaranteed but only estimated, that caused you to distinguish it from a cost plus system?

A. Yes, because an insurance company don't know what a particular rate now put into effect is going to result in at the conclusion of the period.

Q. Now, counsel asked you about the earned premiums for the years 1917 to '21, inclusive. Now, in the year 1917, with the five year policies written in the year 1913, and which had not been canceled, would any part of the premiums on those written in 1913 come into your earned premium calculations for 1917?

A. Will you read that question, Mr. Reporter?

(Question read by the reporter.)

A. Into your earned calculation?

Q. Yes.

A. Your premiums all become earned on that year, in that year, of course; beginning of the year.

[fol. 2236] Q. That is, a five year policy written in 1913, part of the premium would be earned in 1913?

A. And '14, '15, '16 and '17.

Q. So that in 1917 you would have part of that premium written in 1913 in your 1917 earned premium figure?

A. Statement, yes.

Q. And then the five year policies written in the year 1914, would part of those earned premiums be in 1917?

A. Yes.

Q. And then the policies written in 1915, would part of the premiums on five year policies and part of the premiums on three year policies be in the 1917 earned premium?

A. Yes.

Q. And the 1916, would part of the five year policies and part of the three year policies and part of the two year policies written in that year come into 1917?

A. Yes.

Q. And the policies written in 1916 and subsequently to January, we will say, of that year, would part of the earned premiums of that year enter into the 1917 premiums?

A. Yes.

Q. And would those policies which were in fact written in 1917 for periods of one year, three years or five years, a part of them, go into the earned premium figure? For the year 1917?

A. Yes.

Q. Now, as bearing on the question of the propriety of figuring this upon volume, assume the case of a commission merchant handling fruit on cars, in carload lots, we will say, here in Kansas City, and having no office at all, and receiving his mail at his house and receiving apples and potatoes, we will say, from farmers in the country at [fol. 2237] carload lots and reselling them to others here on the tracks. In a mercantile transaction of that kind, does capital enter materially into the question?

A. Surely so. The individuals who were sending their produce to this particular man would be much more inclined to send it to him because they know that this man is a man of responsibility.

Q. If he owned a big building, we will say he owned a skyscraper in Kansas City, he would be more likely to get commission orders than if he didn't own anything at all and just had his office under his hat?

A. Quite so.

Q. How, in the mercantile world, do such transactions, whether the man owns a skyscraper or doesn't own anything, are those elements entered into in his figuring his commission rate to his customers?

A. Not in determining the commission at which he will take goods, no.

Q. Would you as an economist figure out the rent he must receive from his skyscraper and how much he paid his elevator man, how much *must* he had left, in trying to figure out what commission he charged for handling apples, to the farmer?

A. No.

Q. In the case assumed by counsel, where he had a telephone company and an insurance company doing business for one year, if the company wrote all of its policies on the first day of the year and wrote them for one year and wrote no more business during the year, then it could close its books at the end of the year in the same way the telephone company could, could it not?

A. I think so.

[fol. 2238] Q. If it wrote policies for one year terms and wrote them each day throughout the year, say some had one day to run and some a month and some eleven months still to run, you would have a different problem on your hands?

A. Entirely so, because your liability would project itself over the year.

Q. Counsel asked you about various forces which might injure a telephone company. I suppose one of those forces of nature which might cause injury to telephone exchanges and other large aggregations of investment would be the possibility of fire losses on, say, their exchange, where they have a telephone instrument and so forth?

A. That is an element going into the cost.

Q. And they pass the liability on to the fire insurance companies in that case, don't they?

A. Yes; for a premium.

Q. Are most of the large life insurance companies, such as the New York Life and the Massachusetts Mutual and the well known large companies, are most of those life insurance companies mutualized?

A. Yes, and the tendency has been very marked in the last ten or twenty years for life insurance companies to mutualize themselves; several of the well known stock companies having become mutualized.

Q. And the strictly stock companies without mutual features are the exception rather than the rule in the life insurance business, are they not?

A. They are becoming so very rapidly.

Mr. Folonie: That is all with this witness.

[fol. 2239] The Referee:

Q. Mr. Gephart, a few moments ago, in response to a question I asked you with reference to the ten per cent rate which you had fixed, you said that as to six per cent of that ten per cent rate, you calculated that six per cent on the earned premiums. Why choose that basis?

A. The earned premium represents the real amount of money left to the company after carrying the particular liabilities. That is the amount that can be denominated their funds.

Q. Is it any more their funds than the capital stock or capital—funds derived from the sale of the capital stock, or the surplus?

A. No, perhaps not.

Q. Then why that particular fund, rather than some other?

A. Because I do not consider that capital, as I have already testified—the other sums that might be taken—is as good a basis as the total amount of business done.

Q. You don't mean total amount of business done? You mean earned premiums?

A. Earned premiums, yes.

Q. Well, why not?

A. Because there is no necessary relationship between your capital stock and the earned premiums and the volume of business.

Q. Very good. What of it? Why do you choose the earned premiums rather than the amount of money received from the sale of capital stock, or the amount of that fund plus the surplus?

A. Well, that seems to me to be a better basis than any one of the others.

Q. Why?

A. Because that more nearly represents what in other lines of business we call the volume of sales.

[fol. 2240] Q. Why, in any line of business, is that better than the capital stock, for example?

A. Well, because in the fire insurance business, especially, there is no possibility of guaranteeing any permanency of any assumed rate of return upon that capital.

Q. Aside from certain peculiar lines of business, that is the general rule in all business, is it not? There is no guaranty of any certain amount of return?

A. No, but the prospect of getting it is greater than in some lines of business.

Q. You think the prospect of calculating with certainty upon the returns of a large department store, for example, is any greater than in the stock fire insurance company of long standing?

A. Yes, they expect to make a certain profit upon the business they do during the course of a year, and it is a business with more regularity and less fluctuations and greater certainty than the fire insurance company's business.

The Referee: Proceed.

Mr. Folonie (continuing redirect examination):

Q. If the volume of business or the amount of earned premiums derived were eliminated from any consideration in determining the profit a company was entitled to have, what would be the economic consequences as to companies furnishing service to the public by reaching out for new lines of insurance and insuring all classes, as distinguished from select classes?

A. Might be impossible in that event for the company to successfully continue in business.

The Referee: Why?

[fol. 2241] A. Because if you figure your profit upon your capital alone and not upon your volume of business, then the surplus will be a very slowly accumulating one and the capital might easily become impaired through the indemnity contracts—due to the increased number of indemnity contracts arising out of the greater volume of business.

The Referee: That would depend upon the amount of the capital, would it not?

A. Well, perhaps so.

Mr. Folonie:

Q. Would a company be safer to select—if it were going to have a given return on its capital, regardless of the scope or volume of business it did—would a company be well advised under such circumstances to insure say, only sprinklered risks and leave all the dwelling houses out of its insurance entirely?

A. It certainly would, because thereby you would reduce your risk enormously.

Q. And do you think that as an economic problem it is for the good of the public at large that companies be encouraged to indemnify against as many forms of fire loss as we will say, for example, as possible, or to limit them closely to selected and specialized lines of indemnity?

A. I think it is necessary to have all of our large fire insurance companies insure various kinds of risks instead of selecting particular lines of risks. There is a place for factory mutuals and other types of mutuals that do have specified and selected kinds of risks, but for the ordinary

commercial fire insurance company, they ought to be encouraged to widely select their risks, not only as to terri-
[fol. 2242] tory but also as to different kinds of property, in order that those with the higher risks may have the benefit of the earnings from the lower and thereby render service to the public at large.

The Referee:

Q. Mr. Gephart, if the amount of money invested in insuring any line or any number of lines of insurance in fact reaped from that investment a satisfactory concern, that would be the controlling factor in deciding whether or not that insurance would be taken care of by appropriate companies, would it not?

A. Yes, if you can guarantee that satisfactory return.

Q. Well, without a guarantee. There is no guarantee now, is there?

A. There is no guarantee now, and that is why I think that the return ought to be higher than the 10 per cent.

Q. Well, I say, assuming now that you get a satisfactory return, guarantee or no guarantee, where there is no guarantee now, if there is a satisfactory return to the stockholder in any line of business, there will probably never be any lack of funds for investment in that business, no matter what the business were?

A. In the event, if the individual capitalist feels he can get that return he will put the money into it.

The Referee: Certainly. That is all.

Recross-examination by Mr. Barker:

Q. Mr. Folonie, in asking you in comparison with the fire stock insurance business about a man in Kansas City that lived out in the southern part of town some where and had a shack and sold apples which he got from the farmers, no partnership and not incorporation, no firm of
[fol. 2243] any kind, you told him that you didn't think that man could do very much business because the people wouldn't have any confidence in him. Is that right?

A. Yes.

Q. Did you notice where Dr. Cook down in Fort Worth did quite a lot of business without any capital?

City for the middle western states of that company, and in 1913, I became the assistant United States manager of the Royal Assurance Company, and in 1914, assistant manager of the National Fire Insurance Company Western Department, at Chicago.

[fol. 2247] Q. In the course of your experience in that business have you become familiar with the activity of fire insurance companies in the reinsuring of the risks of each other by way of reinsuring the unexpired portions of policies of other companies where a part of the business of another company is taken over?

A. Yes.

Q. And have you become familiar with the activity of companies where they reinsure or acquire all of the business of another fire insurance company, including its agency plant?

A. Yes.

Q. What is the general and customary average commission allowed by the assuming company to the ceding company where a part of the business of the other company is taken over by way of reinsuring of those risks?

A. From 25 to 30 per cent.

Q. Of what?

A. Of the unearned premium.

Q. What is the general and customary average amount which is paid when all of the business of a company is taken over and all of its unexpired business, including agency plants? I am speaking now of a going company of good repute and standing?

A. Well, it varies, of course, depending on the character of business, the character of the agency plant, the locality of territory in which the reinsured company does business; but the average would be about fifty per cent allowance of the unearned premiums.

Q. What would you say is the value of the agency plants of companies in the State of Missouri in general repute as [fol. 2248] going companies, respecting the value of the agency plants of such companies?

Mr. Barker: Wait a minute. What agency plants and what companies in the State of Missouri?

Mr. Folonie: All the companies doing business in the State of Missouri.

Mr. Jacobs: Well, the defendant objects to that question as calling for improper conclusions by this witness. He has not in any way qualified to answer as to the value of all the agency plants of all the companies in the State of Missouri.

The Referee: He has testified to an extended experience in the insurance world, and he has testified that he is familiar with the matter of taking over the entire companies and portions of the business of insurance companies.

Mr. Jacobs: Well, Your Honor, he has also testified that agency plants are valuable more or less according to location, and among other considerations that he stated a moment ago; and an answer covering all the agency plants without regard to the conditions with reference to each individual one certainly couldn't throw any light on this question—if he was able to make such a blanket answer.

The Referee: Well, it is a matter that goes to the weight of the evidence, I think, and will be subject to cross examination. Overruled.

(To which action and ruling of the referee defendant by his counsel then and there at the time duly excepted and still excepts.)

[fol. 2249] Mr. Folonie: You may answer.

A. In my judgment, based upon my experience in re-insuring the entire business of the company, I would say that the average would be 25 per cent of the unearned premium of the company.

Mr. Folonie: You may cross examine.

Cross-examination by Mr. Jacobs:

Q. What do you base that on, Mr. Bell?

A. I base it on my knowledge of re-insurance that have been effected, of going companies, and those transactions of that character which I have negotiated myself.

Q. Now, are you referring, when you say average of 25 per cent, are you saying and do I understand you to say that the average value of the agency plants of this state is 25 per cent of the unearned premium?

A. I think that would be a very fair estimate, for the State of Missouri.

Q. How many agency plants are there in the State of Missouri?

A. As many as there are companies transacting business in the State of Missouri.

Q. Well, that is not an answer, Mr. Bell, to my question. I am asking you for a definite answer. Now, how many agency plants are there in the State of Missouri?

A. Well, every company has its own agency plant.

Q. I apprehend they have more than one, don't they?

A. Depending if they have subsidiary or auxiliary companies, yes.

Q. How many are in the State of Missouri and where are they?

A. Well, they are all in the State of Missouri, sir.

[fol. 2250] Q. Missouri is a considerable sized state. Perhaps you are familiar with the state, but it is considerable in extent; and what I want to know is where they are in the Sate of Missouri and how many there are and to whom they belong?

A. Well, that question is impossible.

Q. Does that question amuse you?

A. It is to me, yes, as a practical insurance man.

Q. You are assuming to testify as to the value of these insurance plants in the State of Missouri?

A. Yes.

Q. And you don't know even how many there are in the state, do you? Just answer the question, if you will, please.

A. Well, I am not——

Q. (Interrupting.) I say just answer the question, yes or no.

A. No, I don't.

Q. And you don't know where they are located, do you?

A. Not each specific company's plant, no.

Q. And you don't know to whom they belong at this moment, do you?

A. Belong to the company that has the agency.

Q. I understand that, but I am asking you for the definite information as to whom they belong. I understand that when a company has an agency it belongs to the company, but I am asking you for that.

Mr. Folonie: Object to counsel stating what he knows; improper comment.

Mr. Jacobs:

Q. Now, Mr. Bell, do you or do you not know to whom they belong?

A. Without having referred to the records of the insurance department—which has a complete list of the agents [fol. 2251] of each company transacting business in the State of Missouri—no. If I had that information here I could answer your question.

Q. Well, I didn't ask you for that statement about the department. The department's information doesn't mean your information as a witness, does it?

A. Public information.

Q. Have you been there and looked it up?

A. No.

Q. So you are not in any way refreshing your recollection or basing your judgment on anything you saw in the department, are you?

A. No.

Q. Now, my question to you was, you don't know at this moment to whom those agencies in the State of Missouri belong, do you?

A. I don't know the specific agencies.

Q. Now, you say that without knowing the location of the agencies, how many there are, to whom they belong, that you are able to judge the surrounding considerations that fix the value of those agencies?

A. In a general way. That is my judgment.

Q. Have you done business with these agencies?

A. Many of them.

Q. How many and where and when?

A. Well, you mean the agents in the State of Missouri?

Q. Yes. These organizations about which you are testifying.

A. Well, we have done business with the agents of the National Fire Insurance Company.

Q. That is one company?

A. Yes.

[fol. 2252] Q. Do you know how many stock fire companies are doing business in the State of Missouri, Mr. Bell?

A. Approximately.

Q. Well, give me the number?

A. About 200, I should say.

Q. So how many besides the National have you done business with in the State of Missouri? How many agencies? I am talking about you as an individual. You are the witness.

A. Agents of the National and also the agents of many other companies.

Q. Have you come in contact with the agencies of the 200 companies in the State of Missouri, or with the agencies of the National Company in the State of Missouri?

A. Both. Companies——

Q. Well, now, how many have you come in contact with outside of the agencies of the National Company?

A. Well, it is impossible for me to answer, because I have been connected with three companies and transacted business in the State of Missouri.

Q. You have talked about the Royal British Company—what?

A. The Royal Exchange Assurance Company.

Q. Is that Royal Company a British company?

A. Yes.

Q. And you were also the representative of the North British Company?

A. I was.

Q. Is it a British company?

A. Yes, sir.

Q. Have those two organizations agencies in Missouri?

A. Yes, sir.

[fol. 2252] Q. During your connection with them you had some connection with the agencies in the State of Missouri?

A. Yes, sir.

Q. Well, then, were you in the zone including the State of Missouri, when you were with those companies?

A. Yes, sir.

Q. What other companies besides these two British companies and the company you now represent, of Hartford, Connecticut?

A. None directly, except as those agents are the agents of other companies.

Q. Yes, sir. Well, now, how many companies does your agency represent and what companies are they—in the State of Missouri, I mean?

A. That is impossible for me to answer, sir, because I don't know how many companies each one of our agents represents.

Q. Then you haven't come in very intimate connection with the work for other companies, when you don't know whom they represent, have you?

A. Well, only in a general way.

Q. Well, it is so general that you don't even know who the companies are, do you, Mr. Bell?

A. No, sir.

Q. Have you got an agency in St. Louis?

A. Yes.

Q. What is your agency commission in the City of St. Louis?

(Witness speaks to Mr. Folonie.)

Mr. Jacobs: Well, talk to me.

Mr. Folonie: He just told me that he couldn't answer that question. Answer yes or no, and when you can't answer——

[fol. 2254] Mr. Jacobs (interrupting): Wait a minute. I object to this, as the witness says he has been through many of these examinations.

Mr. Folonie: He just finished saying he had not.

The Witness: I have not.

Mr. Jacobs: Well, then, I misunderstood you. I thought you said you had been through many of them. You seemed to be kind of a veteran witness, Mr. Bell, and that's why I misunderstood you, perhaps.

Mr. Leahy: We object to this.

The Referee: Sustained.

Mr. Jacobs: I withdraw it.

Mr. Leahy: We ask counsel be reprimanded.

The Referee: Just so you don't ask for a jail sentence, Mr. Leahy.

Mr. Jacobs: What is my question, now?

(Question read by the reporter.)

The Referee: You mean what rate is charged as commissions?

Mr. Jacobs: Pardon me, Your Honor?

The Referee: I didn't understand what your question was.

(Question again read by the reporter.)

Mr. Jacobs: I mean the commission they pay in the City of St. Louis.

Q. What does your agency get in the way of commission in the City of St. Louis?

A. I couldn't answer that without having the records before me. It varies with different agencies.

Q. You say that the agency commission varies in different agencies?

A. Yes.

[fol. 2255] Q. Do you mean that the City of St. Louis, within the City of St. Louis, or in different localities?

A. In the City of St. Louis.

Q. Do I understand that you have a varying commission, that you pay varying agents, within the City of St. Louis?

A. Yes, sir.

Mr. Folonie: Upon varying business.

Mr. Jacobs: Now, Mr. Folonie, you are not the witness in this case, and Your Honor, I am objecting. These witnesses may need help, but I object to it.

The Referee: The objection is sustained without further argument. Proceed.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now, with Mr. Folonie's help, Mr. Bell, have you got anything to add to your answer to my question?

A. Well, only the varying commissions based upon different classes of agents in the City of St. Louis.

Q. Now, do you know anything about varying commissions within the State of Missouri upon the same class of business?

A. They are all the same, with the exception of farm property and business in St. Louis.

Q. What do you mean by that? You mean that there is a difference in agency commission on farm property?

A. Yes, sir.

Q. And a difference in the City of St. Louis?

A. Yes, sir.

[fol. 2256] Q. What makes the difference between St. Louis and Kansas City?

A. Well, that is—dates back to many years before I was in the business.

Q. I know, but I am asking you why?

A. I am trying to answer your question by explaining perhaps the condition. St. Louis being a large city, unusually preferred business there in the old days, companies carried higher commissioners than they did in the rest of the State of Missouri, and that practice has continued to this date.

Q. Is that largely due to a brokerage situation, Mr. Bell?

A. I think so.

Q. By that you mean that there is an intervening broker to whom a part, at least, of the excess commission going to the agent is paid in the securing of business?

A. I think that is true; brokers and solicitors.

Q. Does that amount to ten per cent in excess of the agency commissions in Kansas City?

Mr. Folonie: We object, unless it is limited to the classes of business, because not applicable to all classes alike.

The Referee: Overruled.

(To which action and ruling of the referee plaintiff by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: I object to counsel saying that it does not apply to all classes alike; just simply an instruction to this witness upon this question and not any proper objection at all.

[fol. 2257] Mr. Folonie: I submit that is a proper objection, because the question as propounded must necessarily be misleading.

The Referee: Both objections are overruled.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Jacobs: Now, Your Honor, I feel that in examining the witness there was a clear instruction to this witness of a limitation upon his answer. Now, this witness is qualified, presumably, as an insurance expert. That is what he was put on this stand for, and qualified by Mr. Folonie: Now, he instructed this witness just a moment ago and interposed an answer to the question propounded to the witness. I feel, Your Honor, that in examining witnesses who are offered as experts that they should be allowed to answer these questions themselves and not have suggestions made following a question propounded by this side, by counsel for them.

The Referee: You are addressing your argument now to the last remark made by Mr. Folonie?

Mr. Jacobs: In addition to my own objection to this court, that Mr. Folonie interposes a special answer or a limitation upon the witness' answer, following a question to this witness. The same thing transpired just a little while ago, when Mr. Folonie again placed a limitation upon the witness' answer. I believe, Your Honor, that this witness ought to be allowed to answer these questions without any assistance from counsel, and then if afterwards he wants to take him on re-direct perhaps he can ask him these [fol. 2258] things; but I don't believe this witness should constantly be receiving help in the matter of cross examination, from counsel on the other side.

The Referee: The objection to the form of the objection made by Mr. Folonie is overruled. Proceed.

(Question read by the reporter, as follows:

"Does that amount to ten per cent in excess of the agency commissions in Kansas City?")

A. I don't know.

Mr. Jacobs:

Q. You don't know?

A. No.

Q. Have you got an agency in Kansas City?

A. Yes, sir.

Q. Do you know anything about the commissions you pay in Kansas City and St. Louis?

A. Yes, sir.

Q. Aren't you manager for your company?

A. Yes, sir.

Q. And isn't Missouri included in the western zone for which you are manager?

A. Yes, sir.

Q. Can't you tell this court what the commissions are with reference to the commissions in the Cities of St. Louis and Kansas City?

A. Yes, sir.

Q. What is the difference, as to whether or not there is a 10 per cent difference?

A. Depends entirely on the classification of business we receive.

Q. I am talking about the same class of business.

A. It is not 10 per cent.

Q. What is it?

A. Exactly what it is I couldn't tell you.

Q. How do you know it is not 10 per cent, then?

A. Because I know we don't pay 35 per cent commission for preferred business in St. Louis.

[fol. 2259] Q. You are sure of that?

A. Absolutely.

Q. You don't pay it in the form of a supervision charge of 5 per cent?

A. No, sir.

Q. You don't do that?

A. No, sir.

Q. Don't know how much it amounts to?

A. No, sir.

Q. Do you know whether the other companies do it?

A. I have heard they do, but I don't know it. That is the proper answer, Mr. Commissioner?

The Referee: There is no objection to it, and anything not objected to is proper.

Mr. Jacobs:

Q. Now, you say that you "understand" and "have heard" that other companies do that?

A. I have heard that other companies pay a supervisory commission of 5 per cent.

Q. Now, is there an additional 5 per cent over and above the 5 per cent for the supervisory charge that is called a preferential rate, over and above the rate on the same class of business so done in Kansas City?

A. Yes.

Q. Now, have you got an additional 10 to 15 per cent payment which you make in the City of St. Louis which is contingent in character and based upon the profits of your company?

A. With a few agents.

Q. Now, in other words, you have some agents to whom you give this 10 or 15 per cent contingent?

A. 5 per cent contingent.

Q. What have you got—what do you know, if anything, about a payment of from 10 to 15 per cent contingent commission?

A. Not to my knowledge.

[fol. 2260] Q. Your company usually pays 5 per cent contingent?

A. To a few class 1 agents.

Q. In the City of St. Louis?

A. Yes, sir.

Q. And then you do pay the 5 per cent preferential?

A. Wouldn't call it preferential. It is 5 per cent higher commission than we pay in the rest of the cities.

Q. Well, call it anything, then. The fellow who gets it would feel himself being preferred, wouldn't he? Do you know, Mr. Bell, what the additional commissions, or commissions that you say are higher, in the City of St. Louis than they are in the balance of the State of Missouri, amount to per year?

A. No.

Q. Would you say that they amounted to $500,000?

A. Haven't any idea.

Q. You have no remote idea?

A. No.

Q. Do you believe that it is proper—I am going to ask you to assume that that additional, the additional fees paid or commissions, amount to $500,000 per year, in the City of St. Louis. Do you believe that those additional fees should be paid, Mr. Bell?

A. Under the present method of transacting business in St. Louis, yes.

Q. What kind of charge would you make for those additional fees?

A. Charged to commissions.

Q. It is not a regular agency commision in the sense generally understood, is it?

A. Yes.

Q. Well, it is an additional commission?

A. No, it is the fixed, going commission in St. Louis.

Q. I understand—well, is that quite accurate, that statement?

A. I think so.

[fol. 2261] Q. In the light of your statement a moment ago that some agents are paid and some agents are not paid, even in the City of St. Louis, what would you say? Speaking accurately, would you say that that was fixed commission in the City of St. Louis?

A. Different classes or different agents in Missouri; some agents that are called Class 1 agents get a contingent commission. Other agents, what is known as Class 2 agents, doing business in the territory outside of the downtown or congested district of the city, don't get a contingent commission.

Q. What I am getting at is, if you mean that that is the fixed St. Louis commission, within certain limitations there?

A. With the National Fire Insurance Company.

Q. With the National Fire Insurance Company. Now, you testified a while ago this advanced or extra or extraordinary commission which is paid in the City of St. Louis over and above all other agencies in the State of Missouri is due to certain factors like the payment of people who produce the business—what did you call them a while ago?

A. Solicitors.

Q. And what else did you call them?

A. Brokers.

Q. That is where the extra commission goes, isn't it?

A. On business produced by those men, yes.

Q. Now, Mr. Bell, do you believe that that additional money so paid should be charged as an expense against the State of Missouri in arriving at a fire insurance rate?

A. I don't believe that the commission is charged against the State of Missouri in arriving at a fire insurance rate.

[fol. 2262] Q. Now, we will take that part of the answer. Answer the question, then, as to whether or not you believe it should be charged against the State of Missouri in arriving at a rate.

A. Whatever commission is necessary to transact the business of the company should be charged against the business.

Q. Well, you just said a moment ago that you didn't believe that those charges were made against the State of Missouri.

A. They are not, now, to my knowledge.

Q. If that is so, then is that because it is a recognition of the fact that they are not a proper charge against the State of Missouri in arriving at a rate?

A. No. I am not sufficiently familiar with the statistical end of our business to know just how the basis rate of Missouri is made.

Q. Well, with these extraordinary charges that go to others, that you have stated, do you think that they should be charged against the State of Missouri in arriving at a fire rate for the State of Missouri?

A. Certainly should.

Q. But you say that they are not actually charged against the state?

A. To my knowledge.

Q. And it is your belief, isn't it?

A. That is my belief.

Q. Well, why aren't they charged against the State of Missouri?

A. I couldn't answer that.

Q. But yet you say they should be charged?

A. In my judgment, they should be.

Q. Have you ever made that suggestion to your company?

A. No.

[fol. 2263] Q. Who makes your annual report to the State of Missouri, for your company?

A. Our home office at Hartford; we prepare them, our office does.

Q. Under your supervision?

Q. They are made in your office under your supervision

A. Yes.

Q. And your tax report likewise?

A. Yes.

Q. And your experience, your "underwriting experience by classes" report, as well?

A. Yes.

Q. They are made in your office under your supervision and then issued out of your home office in Hartford?

A. Yes.

Q. And verified by your president, no doubt?

A. Well, I would hardly say he verifies them, but he believes they are accurate.

Q. When I say "verified" he makes affidavit to them?

A. Yes.

Q. And you don't include these charges, you say?

Mr. Folonie: I object to that.

Mr. Jacobs:

Q. (Continuing:) These extraordinary St. Louis charges?

Mr. Folonie: I object to any assumption that they include or exclude them from their St. Louis statements as having any relation to the previous question about their being included in any rates; an obvious effort to confuse that matter; entirely different subject matter. Counsel's question assumes now the witness has said anything about including them in their annual statement returns—which he has not mentioned.

The Referee: I think the witness can differentiate. Overruled.

[fol. 2264] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Q. They certainly are included in our annual statement.

Mr. Jacobs:

Q. Are they included in the other two reports?

A. Certainly.

Q. Sure of that?

A. Yes.

Q. And you are as accurate on that as you are that they are in your annual statement report?

A. Yes, sir.

Q. Now, Mr. Bell, are you sure of that?

A. Sure as a man can possibly be that don't make them up himself.

Q. Let me suggest to you that your tax report does not contain any expense account. Do you think your report on expenses for agency commissions in St. Louis is included is that report?

A. Everything is included in our report that the department asks for.

Q. You say that you are equally sure that they are in your annual statement report—after Mr. Folonie's statement to you. Now, if I would suggest to you that there is no expense account in the annual statement report, would you still say that you were sure that these reports relating to those charges in St. Louis were in your annual statement report?

Mr. Folonie: We object to the assumption that the expenses are not in the annual statement; the national expenses of his company are all set forth in the annual statement.

Mr. Jacobs: I am just asking about the State of Missouri. I limited it.

[fol. 2265] Mr. Folonie: The national expenses include all of the United States, including Missouri.

The Referee: Read the question.

(Question read by the reporter.)

The Referee: Overruled. Answer the question.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. The question is so involved to me, Mr. Commissioner, that, not being a statistician, I can only say that everything that the State of Missouri requires to be included in our reports are included, including expenses of St. Louis—must be included in the expenses of the State of Missouri.

Mr. Jacobs:

Q. Now, Mr. Bell, you are stating that you make the reports required by the state department, that is just what you just said and intended to say, wasn't it?

A. Our department makes a report.

Q. Now, have you any definite, independent information outside of that generalization of what is in those reports that are made to the State of Missouri each year?

A. Only in a very general way.

Q. Do you know, then, what is contained in the annual statement report?

A. I am familiar with the report, I say.

Q. As distinguished from the tax report?

A. Only in a very general way.

Q. Can you tell what is in the tax report, as distinguished from the underwriting experience by classes report?

A. No.

[fol. 2266] Q. Well, now, Mr. Bell, when you stated definitely and certainly a moment ago that those expenses with reference to excess commission charges in St. Louis were contained in your report, you were stating a fact that you were not definitely and independently certain of, weren't you?

A. I am certain that all expenses incurred in the State of Missouri, including St. Louis, are included in the report, if it is asked for by the blank.

Q. I am not asking you what is asked for in the blank, unless you can tell this court what is in the blank. I am asking you, Mr. Bell, for your definite, personal, independent information concerning this matter.

Mr. Folonie: Object to pursuing the subject as to whether it is one blank or in another blank. It is quite apparent this witness has no intimate knowledge of whether that expense statement is on one of those blanks rather

than another, and it doesn't make a bit of difference that I can see.

Mr. Jacobs: Might not be in any of them. The witness started out by saying it was not in any of them, and then, after receiving certain assistance from counsel, he changed his story.

The Referee: Read the question.

(Question read by the reporter.)

Mr. Jacobs:

Q. Have you that kind of information concerning these blanks?

A. Not with me.

Q. In your head?

A. No, sir.

Q. Very well. Now, do you know whether or not, Mr. bell, the excess agency commissions charged in the City of St. Louis and paid by the companies there are included in [fol. 2267] the reports or any of them made to the State of Missouri?

A. I know they are included in the expenses of the company as shown in its statements.

Q. How do you know that?

A. Well, I have—I know it because it is necessary for that information to be in the blanks.

Q. Have you an independent recollection of the requirements of the blank?

A. No.

Q. Now, you testified a little while ago that those excess commissions were not reported, or charged, rather, against the State of Missouri. Did you mean that, when you said that?

A. No, I didn't make any statement——

Mr. Folonie (interrupting): Just a minute. He didn't——

Mr. Jacobs (interrupting): Now, wait a minute I want the reporter to read that answer back.

Mr. Folonie: The witness has already stated that.

The Referee: Wait a minute, gentlemen. Nothing before the referee.

Mr. Folonie: I am tired being bullied by this lawyer.

Mr. Jacobs: Quit trying to testify yourself, then.

The Referee: Gentlemen, let's avoid personalities. Counsel on both sides will, of course, as a matter of proper practice, in their objections avoid anything except objections. Now, is there a pending question?

Mr. Jacobs: I asked the reporter, Your Honor, to turn back to the statement of this witness with reference to his statement that those excess charges were not charged [fol. 2268] against the State of Missouri in making rates, and I want to get that answer.

Mr. Leahy: We object to that.

Mr. Jacobs: The witness said he didn't make it.

Mr. Folonie: Counsel has now changed the very question he asked. He is now asking him to look up something different again.

The Referee: See if you can find what Mr. Jacobs has in mind, Mr. Blume.

(Whereupon the reporter read the record as follows:

"Q. Now, Mr. Bell, do you believe that that additional money so paid should be charged as an expense against the State of Missouri in arriving at a fire insurance rate?

A. I don't believe the commission is charged against the State of Missouri in arriving at a fire insurance rate.

"Q. Now, we will take that part of the answer. Answer the question, then, as to whether or not you believe it should be charged against the State of Missouri in arriving at a rate.

A. Whatever commission is necessary to transact the business of the company should be charged against the business.

"Q. Well, you just said a moment ago that you didn't believe that those charges were made against the State of Missouri.

A. They are not, now, to my knowledge.")

Mr. Jacobs: Now will you read the pending question, Mr. Blume?

[fol. 2269] (Pending question read by the reporter, as follows:

"Now, you testified a little while ago that those excess commissions were not reported, or charged, rather, against

the State of Missouri. Did you mean that, when you said that?")

A. To my knowledge, the commissions paid in St. Louis are not charged against the people of the State of Missouri in the making of a fire insurance rate

Q. All right. Now, you have stated that, now, and you said that awhile ago, and we are definitely concluded on that one point. That is your belief and knowledge?

A. Not my knowledge; my belief. That is my belief.

Q. Now, Mr. Bell, do you believe they should be?

A. I believe all expenses——

Q. (Interrupting.) I say, do you believe these particular charges should be charged against the State of Missouri in arriving at a rate?

A. As included in the general expenses of the company, yes.

Q. Well, then, why aren't they charged in arriving at a rate in the state of Missouri?

A. As a practical proposition, I don't believe they are.

Q. Well, why aren't they?

A. I don't know.

Q. Now, isn't it because they should not be?

A. I wouldn't say that. I think they should be, as a part of the expenses of transacting business.

Q. Now, those extraordinary—it is an extraordinary expense, isn't it?

A. Not as practice goes, no.

Q. It runs to these outside factors—your solicitors?

A. They are legitimate factors in the business.

[fol. 2270] Q. But they are not the factors that are ordinarily used, over all the balance of Missouri, are they?

A. Not to such a large extent.

Q. Well, you don't pay them anything in Kansas City do you?

A. Business in Kansas City is transacted more generally by agents direct in their dealings with the insured.

Q. And so these extra sums are not paid here but are paid there?

A. That is correct.

Q. Now, these additional payments, or this additional payment that is made in St. Louis operates, of course, if

it is included in the rate fixing, operates to increase the rates all over the state, doesn't it?

Mr. Leahy: He just testified it wasn't included.

The Referee: Let the witness answer.

Mr. Jacobs: He has testified most every way in the world on this.

Mr. Leahy: We object to that.

The Witness: Well, General, you have asked the question in every way in the world.

Mr. Jacobs: I'm not a General. I never reached that rank.

The Referee: Wait a minute, please, gentlemen. Now, Mr. Blume, will you read the pending question, please?

(Question read by the reporter.)

Mr. Jacobs:

Q. Now, what is there about that question you say you don't understand?

A. My testimony was that to my knowledge commissions in St. Louis were not a factor in the making of the rates in [fol. 2271] Missouri, except as included in the entire expense of the company transacting business in Missouri.

Q. All right. Now, do you know how rates are made in the State of Missouri?

A. In a very general way, yes.

Q. Well, now, what is your general knowledge of that matter?

A. The basic schedule is arrived at, and under the so-called analytical schedule which is applied in Missouri, credits and charges on construction, occupancy and exposure, and general conditions, are applied.

Q. That is that Einstein theory of relativity that you use?

A. Yes, sir.

Q. Now, after all the abstruseness of the analytical system of relativity or hazard, what you really do is to figure your premiums and your losses and your expenses and build a rate accordingly, don't you?

A. That is the practical way, yes.

Q. That is the proposition, and that is done by the Missouri Inspection Bureau of St. Louis?

A. Yes, sir.

Q. And that bureau is organized and maintained by the various stock fire insurance companies?

A. I am not familiar with the organization of the Missouri Inspection Bureau.

Q. Well, you know it is not a state organization?

A. Oh, I know we subscribe to their service.

Q. You know it is not in any respect a state organization, don't you?

A. It is an independent organization.

Q. How?

A. I understand it is an independent organization.

[fol. 2272] Q. But it is maintained and paid for by the stock fire companies, isn't it?

Mr. Folonie: Object to the assumption it is maintained only by stock fire companies.

Mr. Jacobs: Well, I will say all fire companies, then.

A. Fire insurance companies subscribed for the services of this inspection bureau.

Q. And they are in no sense an organization of the State of Missouri, are they?

Mr. Leahy: Just a minute. This organization is compulsory upon the companies, made so by the Rating Act, and all companies use it, even reciprocal companies use these rates.

Mr. Jacobs: Now, if Your Honor please, you are familiar with the statute which permits the existence of this company to fix rates for the State of Missouri, or this organization, under the supervision, presumably, of the Superintendent of Insurance of the State of Missouri.

The Referee: Read the question, Mr. Blume.

(Question read by the reporter.)

The Referee: You may answer.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Not to my knowledge.

Mr. Jacobs:

Q. So that is really the way rates are made in the State of Missouri, by this company, based upon the factors that were suggested a while ago?

A. Yes.

[fol. 2273] Q. Now, if you include all your expenses, as you suggested in your answer a moment ago, for doing business, then your excess commissions in the City of St. Louis are included in the expense reports to the State of Missouri?

A. I think so.

Q. There is an allocation of the national expenses, isn't there?

A. Yes.

Q. Now, after all, then, your excess commissions do get into these reports, don't they, in that way?

A. Commissions get into the expenses, yes.

Q. I am talking about these excess commissions in the City of St. Louis.

A. All commissions get into the expenses.

Q. I say, including those we are talking about?

A. Yes.

Q. Now, then, they may amount to—whatever they amount to as an added expense, Mr. Bell, the practical effect of them is to increase the fire rates pro tanto throughout the State of Missouri and including Kansas City, don't they?

A. If the schedules were so scientifically and carefully compiled as you intimate, that would be true.

Q. Well, you know more about the compilation of schedules than I do. I am sure you know more about the analytical relativity of hazards as applied to rates than I do. What is the basis of rate-making in the State of Missouri?

Mr. Leahy: We move that last speech be stricken out Your Honor, as no part of his question.

Mr. Jacobs: I will agree to that.

Q. What is the basis of rate-making in Missouri, Mr. Bell?

A. I don't know.

[fol. 2274] Q. You are not in a very good——

A. (interrupting). I would like to ask a question.

The Referee: If at any time the witness doesn't understand the question, he may ask.

The Witness: You say the basis of making rate in the State of Missouri. Did you mean the basis rate?

Mr. Jacobs: No, I don't mean the basis rate. I mean what is the basis of your rate-making?

A. Oh, the analytical schedule.

Q. That is your system?

A. Yes.

Q. Upon what do you found rates in the State of Missouri?

A. Experience of the companies.

Q. And that is your system. I mean practically speaking, what do you take into consideration in arriving at a rate in the State of Missouri?

A. I couldn't tell you as to a specific rate, but generally speaking it is the experience of the company.

Q. That is what I want. Now, you have certain fire rates in the State of Missouri—are you familiar with the rate law of the State of Missouri?

A. In a very general way.

Q. You know enough about it to know its general purport, don't you?

A. Yes.

Q. Well, in complying with the requirements or taking advantage of the rather broad premises of that law, do you know what furnishes the basis of your rate-making year?

A. The experience of the company and a reasonable profit.

Q. Now, you have premiums, you have losses, and you have expenses, haven't you?

A. Yes.

[fol. 2275] Q. Well, how do you calculate, now, with that in mind, how do you calculate rates in the State of Missouri?

A. Well, make your question a little more specific, please, Mr. Jacobs.

Q. Supposing you were setting out to make a rate in the State of Missouri, what do you use or what do you do?

A. Well, you necessarily must take the earned premiums.

Q. What are earned premiums?

A. The premiums less a proper reserve for—bringing it down to an earned basis.

Q. Well, what are earned premiums is my question?

A. Premiums which have actually been earned.

Q. Well, how do you arrive at that figure?

A. Through the formula of reserve which is set up.

Q. Well, what is that formula?

A. Oh, I am not familiar with it.

Q. How do you arrive at this earned premium figure?

A. Charge against the premiums collected the reserve for the unexpired term of the policies.

Q. How do you arrive at that? Have you got a fund which constitutes your reserve?

A. Yes.

Q. Well, do you know if that is a specific fund?

A. Yes.

Q. You always know how much it is?

A. Yes.

Q. And in that way you arrive at your earned premium and your unearned premium?

A. Yes.

Q. Very well. Now, what else do you use besides that?

A. Incurred losses.

[fol. 2276] Q. And what are they?

A. They are losses which are incurred during the year.

Q. How do you arrive at that figure?

A. Losses that are reported to us during the year.

Q. Well, is that what constitutes incurred losses for that year? How do you know what it is?

A. Well, we know as soon as possible to know, through the reports made to us by our agents, of losses.

Q. Well, those are losses reported, aren't they?

A. Yes.

Q. Are the losses reported and losses incurred the same thing?

A. Yes.

Q. Now, that is what you mean by incurred losses—by losses that are reported to you during the year?

A. Yes, they must be incurred.

Q. That is your definition of incurred losses?

A. Yes.

Q. What else do you take into consideration?

A. Incurred expenses.

Q. What are they?

A. Expenses which we incur in transacting our business in the State of Missouri.

Q. How do you arrive at that figure?

A. They are the annual commissions and other expenses of transacting business, salaries, traveling expenses, and everything of that sort.

Q. Now, what is the difference between incurred expenses and paid expenses?

A. Well, there may be additional—during the year some expenses that we must estimate.

[fol. 2277] Q. Is that what you mean by incurred expenses?

A. The total expense that would be incurred in the transaction of the business.

Q. There might be a lot of those expenses left over at the end of the year that you haven't paid. Do you still count them in the year's business?

A. As expenses, yes.

Q. And you duplicate that each year for the five year period which fixes rates in the State of Missouri, eh?

A. To a greater or less extent.

Q. To an exhaustive extent, don't you?

A. As they are paid they are charged off as the actual expenses.

Q. But there is a repetition each year of the same thing, namely, the calculation of incurred expenses, which lap over at the end of the year, aren't there?

A. Must be so.

Q. And that is true each year of the five year period?

A. Yes.

Q. That furnishes one of the bases of your calculation for rates in the State of Missouri, incurred expenses, incurred losses and earned premiums under the definitions given here by you; is that right?

A. That is my understanding of the method.

Q. Now, Mr. Bell, you say that when there is a reinsurance of the entire business of a company that it averages about 50 per cent—the commissions of the ceding to the assuming company. Does that mean there is left a 50 per cent in which there is a certain hidden profit, or unrevealed profit, I will say, which is revealed and which becomes an actuality upon the reinsurance of the entire business of a company?

A. Profit to who, please?

[fol. 2278] Q. To the stockholders. Of the ceding company.

A. It must necessarily work out that way if the company is able to reinsure its business and get an allowance of 50 per cent of its unearned premiums.

Q. And you testified to 50 per cent as being the average in response to Mr. Folonie's question?

A. Yes, sir.

Q. Now, Mr. Bell, you say you use earned premiums. Do you know how much business is done in the State of Missouri each year in the way of premiums written—average?

A. I haven't those figures before me.

Q. Would you say that 20 million dollars' worth of business per year was done as the average in the State of Missouri, and I will ask you to assume that to be a fact—that about 15 million dollars of that is unearned premium and 5 million dollars is earned premium—that that is a fair average.

Mr. Folonie: Object to any such assumption as that.

The Referee: Suppose counsel may make whatever assumption he chooses.

Mr. Folonie: I thought there might be some extremes beyond that he couldn't go.

Mr. Jacobs: Well, Your Honor, I am really being conservative about that.

The Referee: Objection overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2279] A. Well, I have no knowledge of what it would be.

Mr. Jacobs:

Q. Now, you testified to certain averages based upon that experience as an insurance man of long experience. Would it be fair to say that the unearned portion of that 20 million dollars' worth of business would be something like 15 millions of dollars?

A. That is unearned?

Q. Unearned portion.

A. Depends very largely upon the character of the business that the company transacted.

Q. Of course.

A. One, three or five year business.

Q. All your calculations that you have made, these averages are based upon an average condition, are they?

A. Yes, sir.

Q. Now, I might suggest to you that it has been testified that about 80 or 85 per cent is unearned premium in a year, but I am counting the greater figure and making it 75 unearned and 25 as earned.

Mr. Polemis: Object to that statement, that there has been any such testimony as counsel states.

Mr. Jacobs: Well, I think the court will remember what the testimony is in respect to that matter.

The Referee: I think the reference to what may have been revealed in the testimony heretofore is probably unnecessary.

[fol. 2280] Mr. Jacobs: Very well, withdraw that.

Q. Now, will you say that 15 million dollars would be a fair figure?

A. I don't know.

Q. Would you say 12 million dollars would be a fair figure, or 10 million dollars. What is your unearned premium of your company, average, against your written premiums, of your company?

A. You mean our reinsurance reserve, is that what you mean?

Q. Your unearned premium portion of your premiums, as against your premiums written in a year's business. What is your average?

A. I don't know.

Q. You don't know?

A. No.

Q. Haven't you any idea?

A. That is a part of our business that I don't come in contact with.

Q. Now, Mr. Hall, whatever the amount may be, at least there is a portion of your business every year and a large proportion of it, which represents unearned premiums, as against your premiums written, isn't there?

A. Yes.

Q. Now, when you figure your expenses each year, you figure the expenses for doing the entire business, don't you?

A. Yes.

Q. Everything, including the incurred expenses that lap over into the following year?

A. Yes.

Q. Now, if you do 20 million dollars' worth of business, the companies in the State of Missouri, a part of that, whether it is 10 million or whether it is 15 million dollars, is unearned premium, which goes into your unearned premium reserve. You charge expenses for doing the entire business—the 20 million dollars, don't you? Whatever your [fol. 2281] expense may be, it is all charged, isn't it?

A. I think so.

Q. So you charge all of the expense of doing all of that business, don't you?

A. Yes. I think so.

Q. But now when you figure your income you say you want to base it upon the earned premiums, don't you?

A. I think properly so.

Q. Now, you have on one side your premiums and on the other side your incurred losses and expenses, don't you?

A. Yes.

Q. And over here in the expenses you have got the entire expense of doing every dollar's worth of business for the year, of each of the five years under inquiry, haven't you, as you have testified?

A. Yes.

Q. And a little bit more, because there is bound to be an overlapping of expenses at the end of the period in your incurred expense theory, isn't there? You have all the expenses and expenses that are incurred that might lap over into the following year's business, haven't you?

A. Yes.

Q. Now, when you get over on the income side, against which you are going to compare your losses and expenses in order to arrive at your rate, you don't want to use your 20 million dollars' worth of business, or premiums received or written, but you want to use just the earned premiums, don't you which is only a part of your total income?

A. It is our only income that we have actually earned and that belongs to us.

Q. I say that is all you want?

A. Yes.

Q. And if your unearned premiums bear a relationship to your premiums of, say 75 per cent to 25, then you would [fol. 2282] have over here in your income out of that 20 million dollars 5 million dollars, wouldn't you?

A. I don't think it works out that way.

Q. Well, I am just going to ask you to assume the relationship——

The Referee (interrupting): Mr. Bell, pardon me, if you will closely notice the question in each instance and then answer the question, and then make such explanation, if any, as may be needed, it will facilitate proceedings and avoid confusion between counsel and witness, I am sure.

Mr. Folonie: Say yes or no when you can, and then make an explanation afterwards.

Mr. Jacobs: Now, read the question.

(Question read by the reporter.)

Mr. Jacobs:

Q. Can you answer that?

A. No, I can't.

Q. Is it because you don't understand the question?

A. I don't understand it.

Q. Then I will ask you this, and I will ask you to assume that your unearned premiums amount to about 75 per cent of your premiums written yearly. Now, if that is a fact, your earned premiums will amount to the other 25 per cent, won't they?

A. Yes.

Q. Well, now, you want to base your calculations upon earned premiums, don't you, and you have so stated, haven't you?

A. Yes, that is correct.

Q. That means when you are figuring your income on one side of the ledger for the year's business you are figuring your earned premiums, aren't you, or 5 million dollars, [fol. 2283] alone? That's right, isn't it?

A. The way you present it that would be correct.

Q. But you have said that over here on this side in the matter of expense you have charged the expense of doing the entire amount of business written or 20 million dollars. Now, that is true, isn't it?

A. Yes.

Q. Now, that happened in 1917—16—yes, '17. That happened in 1917, didn't it, this period under inquiry being from '17 to '21 inclusive of both years?

A. Well, I am not familiar——

Q. (Interrupting.) Well, I am telling you the period under inquiry. It is from '17 to '21, inclusive of both years. So that experience would happen in '17 and again in '18 and it would happen in '19, '20 and '21 and your experience would end with '21 wouldn't it?

A. Over that five year period, yes.

Q. Now, your last year would find you with the entire expense of doing '21's business, but with only the earned premiums, wouldn't it?

A. Yes.

Q. No matter what might wash out for the preceding years, your last year will stand that way because that is where you cut your investigation off, at the end of '21, don't you, and things remain static at that time, don't they, as they were at the end of '21?

A. So far as the last year is concerned.

Q. Yes, sir.

A. But you have earned the premium on the four previous years, which is included in your premiums earned.

[fol. 2284] Q. But whatever may wash out, may wash out in these preceding years but it won't be done for '21, will it?

A. Oh, no, certainly not.

Q. So you feel, Mr. Bell, under your method of calculation, that the statute gives you a five year period of investigation, and that in your final year it is fair to only credit say one-fourth of your income or that portion known as the earned premium, but charge the expenses of doing an entire amount of 20 million dollars' worth of business, in arriving at a rate. Now, do you believe that is fair?

A. Absolutely.

Q. That strikes you as fair?

A. Absolutely, yes, sir.

Q. All right. Now, I believe you defined how you arrived at earned premiums. Have you ever read the rate statute in the State of Missouri?

A. Well, I may have some years ago, Mr. Jacobs.

Q. Do you recall that it refers to premiums received as the basis of calculation in the State of Missouri?

Mr. Hogsett: Objected to as calling for an opinion of law.

Mr. Jacobs: I am asking him whether he recalls whether that expression was used.

Mr. Hogsett: I heard the question, and I object to it on the ground it calls for a construction of the statute by the witness.

The Referee: No, as propounded the question does not. Read the question.

(Question read by the reporter.)

The Referee: Overruled.

[fol. 2285] (To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

A. No, I don't.

Mr. Jacobs:

Q. You don't remember. Now, I want to ask you, if I haven't clearly asked this question before, if excess charges for commissions for brokers and solicitors in the City of St. Louis are charged as an expense in the State of Missouri, under the system of rate-making here, as an added expense, that would operate to increase fire rates in Kansas City, wouldn't it, as well as other parts of the State of Missouri?

A. As a practical proposition, and as I stated before, I don't believe that the commissions paid in St. Louis have affected the rates in the State of Missouri.

Q. Well, now, on what theory do you make that answer, Mr. Bell?

A. On the theory that as a practical proposition the commission paid in St. Louis as affecting the total of commissions paid in the State of Missouri don't amount to anything.

Q. Well, now, if those commissions are charged as an expense, and expenses furnish one of the bases of rates in the State of Missouri, how can you say that they don't affect rates in the State of Missouri?

A. Practically speaking, I said; theoretically, they do, if the rates were properly made with the total of expense, the total losses and incurred premiums.

Q. You say theoretically they would. Well, why do you say that practically they would not?

A. Because we haven't collected a sufficient rate in the State of Missouri to pay our losses and expenses.

[fol. 2286] Q. Well, how is that an answer to my question? I didn't ask you about your profits. I may a little later, but what I am asking you about now is, how can you say when you build rates upon expenses that theoretically it would increase rates in the State of Missouri but practically it does not? Why can you say that, or why do you say that?

Mr. Folonie: We submit he has answered it. They haven't got——

The Referee (interrupting): Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: That might mean they hadn't increased it enough, if it were true.

The Referee: You may answer the question, Mr. Bell.

A. On the theory of rate-making as I have explained it it should—it would—it should.

Mr. Jacobs: If it amounts to half million dollars yearly in the City of St. Louis, or two and a half million dollars for the five year period, if that is a fact, it would be an important factor as an expense item, wouldn't it, in arriving at rates in the State of Missouri?

A. Over a five year—I don't believe it would.

Q. A five year period is the period of investigation for fixing rates in the State of Missouri.

Mr. Folonie: He is asking you to assume.

[fol. 2287] Mr. Jacobs:

Q. If $2\frac{1}{2}$ million dollars excess rates are paid in the City of St. Louis over that five year period, would that affect the rate?

Mr. Folonie: When he asks you to assume it, you must assume it, no matter what it is. If he says 10 million dollars, assume it, just the same.

A. Yes, it would.

Mr. Leahy: You are looking to estalish some principle on the matter, I take it?

Mr. Jacobs: Some facts on it.

Mr. Leahy: Well, it is evident this witness doesn't seem to know the facts. You have gone over this matter at quite a great deal of length.

Mr. Jacobs:

Q. How long has your company been in existence?
A. Since 1879, I think it is.
Q. What is its capitalization today?
A. 2 million dollars.
Q. What was it capitalization ten years ago?
A. I think 2 million dollars.
Q. What was its surplus—what is its surplus today?
A. I think 16 million.
Q. And what was its surplus ten years ago?
A. You will have to let me see the book. I don't remember that.
Q. How much has been the increase in the surplus in the last five years, of your company?
A. I would have to look at the chart.
Q. Can't you give us a rough idea?

Mr. Leahy: That is not informing the court.

Mr. Jacobs:

[fol. 2288] Q. I don't care about the exact cents or dollars.
A. We might as well have it right (examining book).
Q. I believe you gave me your surplus, didn't you?
A. Well, just in a general way. $8,350,000 (referring to book).
Q. Your present surplus?
A. Yes.
Q. What was your surplus five years ago?
A. $4,675,000.
Q. And what is it now?
A. $8,350,000.
Q. Well, you haven't quite doubled your surplus, have you?
A. Not quite.
Q. In the last five years?
A. No.

Q. What stock dividends have you declared in the last five years?

A. None at all.

Q. In the last five years?

A. No.

Q. What stock dividends have you declared in the last five years?

A. None at all.

Q. What actual dividends have you paid in cash?

A. 20 per cent a year.

Q. 20 per cent a year.

Mr. Leahy: On capital.

The Witness: On capital of 2 million dollars.

Mr. Jacobs: That is the way we figure.

Q. $400,000 a year, to be exact?

A. $400,000.

Q. Now, you have paid 20 per cent a year cash dividends in the last five years?

A. Yes, sir.

Q. And you have almost doubled your surplus, from 4 million odd to 8 million odd?

A. Yes.

Q. Now, surplus is nothing more nor less than undivided profits, is it?

A. Well, I wouldn't say that.

[fol. 2289] Q. Well, it represents earnings, doesn't it?

A. It is earnings from various sources.

Q. And these extra 4 million dollars are earnings?

A. Yes.

Q. And in addition to that you paid the 20 per cent cash dividend a year?

A. Yes.

Q. What was the increase in your unearned premium reserve from five years ago until the present?

A. From 12 million to 16 million.

Q. You had an increasing business?

A. Very largely increasing business.

Q. Would you call your experience of the last—by the way, what is that—what is your capitalization?

A. 2 million.

Q. And you have increased your surplus 4 million dollars in the last five years?

A. Yes.

Q. And paid a couple of million dollars in cash dividends?

A. Yes.

Q. That makes 6 million—increased surplus and cash dividends—in the last five years.

A. Yes.

Q. Capitalization of 2 million dollars?

A. Yes.

Q. Are you complaining about that business?

A. Not as to the United States as a whole.

Q. 6 million dollars on 2 million in five years is reasonably good, isn't it?

A. We think so.

Mr. Jacobs: I think that is all.

Redirect examination by Mr. Folonie:

Q. What is the amount your company has at risk there?

A. 4 billion—$4,249,000,000.

[fol. 2290] The Referee: Does that mean there is a possibility—of course, I think it may safely be assumed no probability, but a possibility of a loss in the amount of the figures last named?

A. Well, I wouldn't even call it a possibility, Mr. Commissioner, no. It is scattered country-wide.

Mr. Folonie:

Q. That is the amount you have at risk which, if all the property you have insured was lost, all the risks insured against, you would have to pay; is that what it is?

A. Yes.

Q. I suppose if your business differing from life insurance is not conducted on the theory that all your policies finally mature in a loss, like a life insurance policy—I say your business is not on the theory that every policy you write will finally result in a loss? Your business differing from life insurance, you don't figure that every policy you write will ultimately result in a payment of a loss, like life insurance?

A. Certainly not.

Q. In speaking of these excess commissions in St. Louis, are they paid on all classes of business?

A. Yes.

Q. And are they uniform as to all classes? I mean do you have the same rate of commission on each class of business, or different on different kinds?

A. Different on different kinds of business; as to location as well as classes.

Q. And is the differential in commission rates the same on all classes, as compared with other parts of the state?

A. No.

[fol. 2291] Q. So that on—well, for example, dwelling houses, is the rate of commission paid in general higher in St. Louis than the rest of the state?

A. Yes.

Q. And as to, say, sprinklered risks, is it different in St. Louis, the commission, than in other parts of the state?

A. Yes.

Q. And as to factory buildings?

A. Yes.

Q. And are those all uniform, as to there being a uniform differentiation, or do these vary?

A. Oh, they vary.

Q. And they also vary as to the agents, I think you said?

A. Yes.

Q. When you mention a contingent—where there is a contingent arrangement with the agent, is that a percentage of the profits of the business of the agent, or it is a percentage of the business written?

A. Profits.

Q. Do you have any intimate knowledge of rate-making and use of rate-making schedules? Is that your business?

A. No.

Q. Counsel asked you about adopting for a five year period at the end of 1921—assuming a part of the year's writings that were earned and a part that were unearned—in computing earned premiums, say, in the year 1917, is the earned part of that year's writings in the earned premium as you use it—take the year 1917, is a part of the premium receipts of that year in your earned premium for 1917?

A. Certainly.

Q. Is there any part of the premiums of policies written during the five years before 1917 also in the 1917 earned premium figure?

A. Certainly.

[fol. 2292] Q. So that your earned premium figure is not a part only of the current policy writings for the year, but also that part which was unearned in previous, in the previous year, and becomes earned in the current year; is that correct?

A. Correct.

Mr. Folonie: That is all.

Recross-examination by Mr. Jacobs:

Q. So we may understand this matter, what are earned premiums?

A. Well, it is the premiums we collect, less the legal reserve.

Q. That is your idea of how it is handled and how you reach it?

A. Yes.

Q. Just as you answered on cross, quite a while ago.

A. I don't understand the question.

Q. Do you know the method of arriving at it?

A. The detail method, no.

Mr. Jacobs: That is all.

Mr. Folonie: That is all.

By the Referee:

Q. One question, Mr. Bell. I believe you testified that you had had experience, or at least knew, whether from personal experience or otherwise, what the method was of handling the situation where one company buys the entire business of another going concern in the same line of business?

A. Yes, sir.

Q. In doing that, how do you arrive at an estimate of the value of the concern which you propose to buy?

A. Matter of judgment, Mr. Commissioner. If you will permit me, I will explain one of my own transactions of that kind that I have negotiated. You go into, for in-

[fol. 2293] stance—we purchase the Fireman's Insurance Company of Dayton. I am speaking now of the National Fire Insurance Company.

Mr. Folonie: You are speaking now of a company that you have actually acquired?

A. We are acquiring the business by reinsurance. We go over their agency plant and the premiums they received from their agents throughout the territory in which they transact business; we go over the record of the business in those agencies, premiums and the losses, we ascertain to the best of our ability as to how many of those agents, or all of them, that we can retain as agents of the National Fire Insurance Company and secure the renewal of that business. Naturally, one company's plant may be better than another. There have been agency plants taken over in which the liability of a company was assumed by another company without one cent of compensation. The other, they would pay, say, 50 per cent allowance of the unearned premium for that agency plant. We may take over the special agents. They may depend wholly on the character of the special agents, the character of the manager they wanted to take over. All those factors would enter into the value of that agency plant. Now, if we were reinsuring a part of that company's business, which is a very ordinary thing——

The Referee:

Q. I am just referring to the entire. Now, then, what would you say is the principal element of value to be considered?

A. The principal value is the agency plant, the renewal of the business through the agent which the reinsured company has.

[fol. 2294] Q. Now, assume this: assume a situation where your company is proposing to take over the entire business, no matter what the method may be, of a company which has outstanding say 1 million dollars in unearned premiums. Would you then attach any value to those unearned premiums?

A. Yes, as that—unearned premiums is the money which that company would pay to us to assume their liability.

Q. Or if that company continued in business it is the money which that company, except for such losses and cancellations as might occur, would receive itself?

A. Yes. That company, if it had continued in business——

Q. That's what I say; just notice the question.

Mr. Folonie: His answer is "yes."

The Referee: Yes, his answer is "yes." I don't mean to bar you from any explanation, of course.

Q. Now, at what percentage would you estimate the value of that 1 million dollars of unearned premiums?

A. Taking over the agency plant, I would estimate it at 500,000 if it was—the conditions were all reasonably favorable for retaining the business.

Q. In other words, if you were fixing the gross price which your company should pay——

A. (Interrupting.) Should receive; should receive for assuming the liability.

Q. No, I don't mean that. I mean to say now your company is going to buy outright the whole business of another company, and that selling company has 1 million dollars outstanding in unearned premiums. In tabulating the dif- [fol. 2295] ferent items which would go to make up the total price you would pay for that business, you would estimate that 1 million as of the value of $500,000?

Mr. Folonie: May I suggest that instead of "pay" you use the word "allow"?

The Witness: It is a little confusing to me.

Mr. Folonie: May I explain to you why?

The Referee: Yes, certainly.

Mr. Folonie: I think the money is actually paid by the other company to the company that takes over the business, and they deduct out of that unearned premium their allowance to them, rather than the money going in the other direction.

The Witness: It is a payment, but it is really an allowance, because you don't pay anything.

The Referee: Very well. That is a matter of method, or of nomenclature.

Q. Now, you would allow $500,000 as the value to your company of the million dollars unearned premiums?

A. Yes, sir.

Q. In other words, the unearned premiums to the amount stated constitute an asset of the selling company?

A. Yes, sir.

Q. And the value of that asset is $500,000?

A. Yes, sir.

Q. Is that the general average or rule with reference to that item?

A. Well, it is the average that I am familiar with in conducting that sort of deals.

The Referee: That is all.

[fol. 2296] Redirect examination by Mr. Folonie:

Q. As a matter of fact, if you were the company who was buying or taking over the other company, as a practical matter of handling the transaction, would the money—would money be paid to you, or would you pay money to them?

A. They would pay money to us for the assumption of their liability.

Q. And instead of paying over to you the full million dollars representing the premium for the unearned part of the outstanding policies, you would make them an allowance of a half of that, and they would pay the other half to you, namely, $500,000; and you would take the liabilities represented by a million dollars of premiums. Is that it?

A. Exactly.

Q. And when you speak of the agency plant you mean by that, do you, the value of the business-getting activities that company has built up?

A. Exactly.

Q. And as a part and parcel of that the policies that that company has outstanding which have not yet matured, which you would expect to get again when they did mature?

A. By renewal.

Q. By renewal. And you would expect to retain those agents and thereafter get the business that they had previously been getting for their former company?

A. Yes.

The Referee: That is in the nature of what is commonly called "good will," is it not?

A. It is a little more than that. It is a plant established.

The Referee: Yes.

[fol. 229] Mr. Folonie: It is a means of making that good will effective, through established agents who perpetuate it, is it?

A. Yes.

The Referee: It is organization plus good will.

A. That expresses it, Mr. Commissioner, exactly. It is organization plus the good will.

Mr. Folonie: That is all.

(Witness excused.)

The Referee: We will take a short recess here.

(Whereupon accordingly done, and thereafter the following proceedings were had:)

Frederick F. Hamilton, called as a witness on behalf of the plaintiffs, having been first duly sworn by the referee, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?

A. Frederick F. Hamilton.

Q. Mr. Hamilton, where are you located in business, please?

A. Chicago.

Q. And what is your business?

A. I am manager of the Western Department of the Queen Insurance Company, and vice president of the company.

Q. How long have you been in the fire insurance business?

A. Thirty seven years.

Q. And in your activities during that period and with what companies and the general nature of your duties.

A. Well, sir, I started in the local agency at New York [fol. 230] Brooklyn, then or four months later, and was

removed out of the business into the office of the Commercial Union. I was with that company about ten years. I left that company to take the Eastern Department management of the New York Underwriters agency, where I remained about five years. From there I went on dual position—took a dual position as general manager, agent of the Manchester Insurance Company and assistant secretary of the American Fire Insurance Company of New York. The Jacksonville fire put the latter company out of business and deprived me of one of my offices, and the Baltimore fire put the Manchester out of business and deprived me of the other office. From there I went to the Queen Insurance Company, where I have been for the last nineteen years, in various capacities; first as general agent, later as secretary, and then as vice president, and during the last year as manager of the Western Department.

Q. How many states does your Western Department comprise?

A. 15.

Q. And does that include the State of Missouri?

A. Yes, sir.

Q. Have you in your activities in your business become familiar with the business of companies where they reinsure the outstanding unmatured risks of another company in part without taking over the entire business of the reinsured company?

A. Yes, sir, I have the usual insurance man's experience in that matter.

[Vol. 2299] Q. And you are also familiar with the activities of companies in taking over all of the outstanding business of a company, including its agency plant?

A. Yes, sir; as indicated before, I have had several personal experiences of that kind.

Q. Do the amounts which are allowed by the reinsuring company to the reinsured company vary between certain limits when a part of the unmatured risks of the company are taken over?

A. Yes, sir.

Q. And what are those ranges of commissions as allowed, in general?

A. Are limited reinsurance?

Q. Yes, just limited in part.

A. Well, there is a range—well, I would say generally speaking from 25 to 30 per cent. There might be cases where slightly beyond that, and other cases where it is lower, but an average would be between 25 and 30 per cent.

Q. Percentage of what?

A. Of the premium taken over. If it is the whole premium, it is the whole premium, and if it is the unearned portion, it would be the unearned portion.

Q. In other words, the premium on that part of the risk which is taken over?

A. Yes, sir.

Q. In other words, sometimes you, on a specific risk you may reinsure a part of that risk and the reinsured company retains a part, and in another, you take over that entire risk?

A. Yes, sir. We may take it all or may reinsure a fraction of a company's business, or the whole business.

Q. Now, in the case where the whole of the outstanding [fol. 2301] business of a company is taken over and the agency plant of the reinsured company is absorbed as part of the transaction, what is the commission, in general, paid, on the average, where the agency plant taken over is that of a going, solvent company in fair standing in business?

A. I am very glad to see you have given the average conditions there, because I couldn't say, as it would vary very greatly, but under the conditions which you specify, I would say in the neighborhood of 30 per cent.

Q. And what, in your judgment, is the fair reasonable value of agency plants in the State of Missouri and similar localities, of going, solvent companies, upon the average, upon the agency plants of such companies alone?

A. I should say, sir, in my opinion, that it would be the difference between the average commission paid to be partial reinsurance and that paid for the entire plant, and with the company in good standing, as you state, whether it be in Missouri or any other state, if there is an average business over the country, it would be the difference, as I say, between what we would pay, 25 per cent, we will say, for partial reinsurance, and entire reinsurance of 30 per cent, in other words, the difference would be 5 per cent, as representing the good will feature and the general features of the business that you buy.

The Referee: 25 per cent of what?

A. 25 per cent of the unexpired risks or unearned premiums.

[fol. 2301] Mr. Polonie:

Q. And what do you mean by agency plant, as that term is used? Just try to say it in simple language, so we will know what you have in contemplation?

A. Well, I mean, generally, sir, the unexpired business on the books of that company and expirations and its good will; its offices, its records, and everything that makes up a company. I am speaking now, sir, of taking the business and not the stock. We are speaking now of the purchase of the business and not the acquirement of the assets.

Q. Now, as a general proposition, in the control of the business, that is as to securing the renewal of the business when it expires by its terms, one of the things which is ordinarily controlled by the local agent?

A. Yes, sir.

Q. And he builds up that business through his friendship and acquaintance with people in his community, does he?

A. Yes, sir; that is a very large asset.

Q. And that is an element or factor, then, in determining the value of what you call the agency plant, that is, the business getting ability of the person who has built up a business by the exercise of his business acumen?

A. Yes, sir, and by his holding ability.

Q. And does it cost money to build up an agency plant?

A. It certainly does; money and time.

Mr. Polonie: I pass examining.

* * * cross-examination by Mr. Barker.

Q. Mr. Hamilton, in handling reinsurance you said that some of it you took for 25 per cent?

A. Yes, sir.

Q. Now, if the average expense is 37 per cent, how can you take it for 25 per cent?

[fol. 2302] A. 37 per cent, sir, would include every bit of overhead. Reinsurance is not subject to the same overhead as your entire line of business. 25 per cent might easily

a very reasonable profit, in my opinion, on handling reinsurance business.

Q. Then if the original company had paid 42 per cent and sold it to you for 25, they would lose the difference?

A. The original company might pay 42 per cent on its entire business, but the business that we took might be something very different—partial reinsurance.

Q. But in a number of years the average would apply wouldn't it?

A. If it were broad enough, over an entire business. If you can just put your question in a little broader way I will be only too pleased to answer it.

Q. Well, don't tell me, please, how to put the questions!

A. I hope you will pardon me.

Q. I will put them my way, just because I think I should do it—and not to be impertinent. So if the general expense is 42 per cent, then, covering a period of years, the business which you took would be 40 per cent, would it?

A. Not necessarily.

Q. So you say that the business which you would take, and assume, for 25 per cent, would not be the business, then, which the company had paid 42 per cent to get?

A. Not necessarily.

Q. But if it should happen to be any of that business, the company giving it to you would lose the difference, naturally?

A. I think that would be correct, yes, sir.

(fol. 2261) Q. Now, then, if you could handle it for 25 per cent, why couldn't the original company handle it for that?

A. Because it is quite conceivable that we would have a less overhead on that business; very great difference in overhead in companies.

Q. Well, the ceding company secures the business?

A. Yes, sir.

Q. And pays all the expenses incident to it?

A. Yes, sir.

Q. And you pay, of course, in case of loss on the business which you have assumed only on proof of loss?

A. On proof of loss, yes, sir. You are speaking of losses, now?

Q. No, I was not.

A. When you speak of "proof of loss" I confuse that with the losses on the business, and not losses in expense. Are you speaking now of losses in expense?

Mr. Barker: Read the question to him, Mr. Blume, please.

(Question read.)

A. It is a technical term that I assume relates to losses by fire. I really don't know what you did mean.

Q. We are talking about fire insurance; not life insurance, you understand, and not marine insurance and not any other form of insurance except fire insurance.

Mr. Folonie: We object to further comments.

The Witness: I am very desirous of answering your question, but when you say "proof of loss" I immediately relate that to our loss department; that is what we have to prove our losses, but our fire questions related to ex- [fol. 2306] pense. If you can explain, I will be very glad to treat it in that way, if you mean expense, the expense of the business.

The Referee: Permit me to make a suggestion to you and then one to General Barker: Please listen closely to the question and understand the question, or else say that you don't understand it, and then answer that question and not any other; and the general doubtless will propound his questions in such a way as to enable you to understand them—and one at a time.

The Witness: Yes, sir.

The Referee: Proceed.

Mr. Barker:

Q. Now, then, when you have assumed insurance and the building burns, now there is some kind of a report made to your company that there has been a burning of the building and therefore a loss, is there?

A. Yes, sir.

Q. And is that called a proof of loss submitted to your company?

A. As to the first, it is called a notice of loss.

Q. And ultimately a proof of loss?

A. Yes.

Q. And you pay on the proof of loss?

A. Yes, sir.

Q. Now, you pay who?

A. We pay the nominee in the policy; the assured, and often the mortgagee as well.

Q. Isn't it true, Mr. Hamilton, that the ceding company looks after all the details in the settlement of the losses and you simply pay upon proof of loss to you?

A. Yes, sir. I see now that you are relating it to reinsurance.

[fol. 236] Q. What did you think I was talking about, Mr. Hamilton?

A. I, for the moment had overlooked the fact that the inquiry was directed strictly to reinsurance. You will pardon me.

Q. Yes, sir, I will. Then you have no expense incident to the adjustment and settlement of the loss, you being the assuming company?

A. That is correct.

Q. Now, the 42 per cent average expense, is that in round figures that include the adjustments and the incidents of adjustment of the loss, or is that an added expense?

A. The expense would include all expense of the company whether adjustment expense or anything else, in the way of expense.

Q. Now, reinsurance is an additional cost to the ceding and assuming company in that there is an added expense for reinsurance, is there not, Mr. Hamilton?

A. An added expense to whom?

Q. Either or both, the ceding company or the assuming company. It costs more to handle reinsurance than to handle direct?

A. It is not my opinion, no, sir.

Q. Now, a company writes a policy for $20,000 originally. Now, it cedes $10,000 of that to your company. Now, you take that and enter it up on your books and carry it as your obligation, do you?

A. As the assuming company, yes, sir.

Q. And that means that two companies, then, have to keep a record of the same risk insured?

A. Yes, sir.

Q. And if there was insurance ceded to five companies, five companies would have to keep a record of the risk insured?

A. Yes, sir.

[fol. 2386] Q. And that would be a duplication, naturally, of trouble, time and expense, would it not?

A. There would be some additional expense, but I thought we were speaking of averages in my testimony, and I would like to have it understood it is not an increase over the average. I couldn't deny the increase in the outgo and expense; increase over the original acquisition cost; but the increase over the general level of expense, it would not be my judgment.

Q. I was not speaking of the general level. I will just make each question as plain as I can, and I am sure you are trying to answer them correctly?

A. I am sure I desire to.

Q. Now, the original company insures the risk?

A. Yes, sir.

Q. Now, it cedes to four or five companies a part of that insurance?

A. Yes, sir.

Q. Now, all of the companies, then, that assume the insurance or part of it naturally enter it upon their books and carry it as such?

A. Yes, sir.

Q. Now, that of itself is an added and additional expense, of course, is it not?

A. Yes, sir.

Q. Now, are you acquainted with Mr. E. F. Richards, formerly vice-president of the National Board of Fire Underwriters?

A. I have a slight acquaintance with that gentleman, yes, sir.

Q. Mr. Richards is an authority in the fire insurance world, is he, Mr. Hamilton?

A. I don't think that I would consider Mr. Richards an authority; in fact, I don't know that I would name anyone as really an authority in the fire insurance world. That [fol. 2387] is a pretty large term, of course, Mr. Richards

has a recognized position in the insurance world; he is a man who has held positions of some prominence.

Q. Are you familiar with the Insurance Field, published at Louisville, Kentucky?

A. I read the paper occasionally, sir.

Q. Did you read Mr. Richards' article in which he stated that reinsurance cost about 4-1/2 per cent to the direct-writing company?

A. No, I didn't read the article. I have heard of it but I haven't read it. I have to attend to that, sir.

Q. His figure is about 4-1/2 per cent. Do you think that that would be about right, Mr. Hamilton?

A. No, I couldn't concede that.

Q. Well, do you think it would be too high, or too low?

A. If I understand the quesion, that it is 4-1/2 per cent over general run of business, I can't, positively cannot concede it; but not having read Mr. Richards' article, I don't feel that I am qualified to testify on it.

Q. I am not speaking now of general average, Mr. Hamilton, but the added cost, if any, to the particular risk insured. Now, confining yourself to that, Mr. Hamilton.

A. Knowing the general cost of overhead, sir, it would not be my opinion that it would be as much as 4-1/2 per cent. I concede that it would be something, but it would not be, in my judgment, as much as 4-1/2. I will concede something.

Q. You haven't made a study to ascertain what it has cost companies to cede business in that way?

(fol. 2208) A. I have given it some consideration. I couldn't say that I have made an exhaustive study, not of late years, any way.

Mr. Barker: That is all.

Redirect examination by Mr. Polonie:

Q. Mr. Hamilton, if the ceded business taken by a direct-writing company was what is known as low commission business, where the commission rate paid is 15 per cent or where it is handled through a broker and not through an agency, say on a 10 per cent basis, does that present a different situation respecting the profit or loss to the assuming company than if it is a high commission business?

A. Altogether, sir, and that perhaps accounts for my confusion in answering the General's quesion, because the low commission business is certainly taken at a profit.

Q. So that the business that is ceded is not necessarily the general run of the business of the company, but certain selected parts that are reinsured, is that it?

A. Yes, sir.

Q. Now, at the time of cessation of business which has just been taken on the books and which has not run through a large part of its course of time, are there expenses such as adjustment loss expenses and things of that kind, expense items that arise subsequent to the time of reinsurance?

A. You mean expense to the accepting company? The expenses that fall to the accepting company?

Q. No, I mean are the entire expenses respecting a particular policy all incurred by the direct-writing company im- [fol. 2309] mediately that the business is taken, or does it arise from time to time during the progress of the time the policy is on he books?

A. Well, certain expenses would arise subsequently.

Q. Now, when business is ceded to a reinsurance company customarily where, we will say, the assuming company takes half of the amount at risk on a particular risk, are the adjustment expenses borne entirely by the direct-writing company or entirely by the reinsuring company, or divided between them?

A. It is divided pro rata.

Q. So that as far as that part of the expense is concerned, the direct-writing company would be relieved of half of the adjustment expense, if there is a loss?

A. That would be it, sir.

Q. Now, if, instead of one company taking insurance, we will say, on a building involving a very large amount, more than it would care to retain, if instead of taking only the part which it desired to ultimately retain, and the other four companies to whom it ceded a portion of the original writing should write directly that portion which they ultimately receive by way of reinsurance, would the cost of doing the business in that way by each of the companies securing its own business on that risk be greater or less, in your judgment, than for one company to take it and reinsure it?

A. There would be no question, in my opinion, but what the cost would be greater.

[fol. 2310] Recross-examination by Mr. Barker:

Q. Now, Mr. Folonie asked you about assuming business that was written on a low commission. Now, suppose you took some business that was written in an excepted city like St. Louis and when instead of the commission and allowance being 10 or 15 per cent there it should be 30 or 35 per cent; that condition would be quite different than you told Mr. Folonie?

A. I think I would have to admit that the—that it would be the reverse, but I would be very cautious about that.

Q. But you don't accept any reinsurance from the excepted cities?

A. I have put out many notices not to accept high cost business at lost cost commissions, in our business.

Q. Whatever you reinsure, the excessive commissions in St. Louis are entirely out of proportion——

Mr. Folonie (interrupting): We object to assuming that the commissions are excessive.

Mr. Barker: Let me finish my question first.

(Question read by the reporter.)

A. No, sir, I couldn't——

Mr. Barker:

Q. Wait a minute; let me finish.

Mr. Folonie: He says he has just started.

(Question again read by the reporter.)

Mr. Barker:

Q. (Continuing). —to the actual expense which should be borne by an insurance company doing a legitimate and fair business? Do you or do you not?

A. No, sir, I couldn't answer it affirmatively.

Q. You couldn't answer it affirmatively?

A. I couldn't agree with that proposition.

[fol. 2311] Q. And yet you do agree with it, don't you, Mr. Hamilton, to the extent that you don't want any of that business?

A. Oh, on occasional risks, sir, but because the business in St. Louis is an average there may be now and then an exceptional payment which perhaps I might not agree with on the cost, and might then agree with you to the extent that here and there there might be a case that I would consider excessive; but not on the average.

Mr. Barker: That is all.
Mr. Folonie: That is all.

(Witness excused.)

[fol. 2312] August H. Werth, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?
A. August H. Werth.
Q. Have you engaged in the work of securing from the various stock fire insurance companies interested in the lawsuit here on hearing their figures respecting losses, pre-
[fol. 2313] miums, expenses and information incidental thereto for the period from 1917 to '21 respecting their experience in the State of Missouri?
A. I have.
Q. By whom were you employed to undertake to secure such testimony?
A. Arthur S. Baty.
Q. And what is Mr. Baty's business?
A. Mr. Baty is a public accountant.
Q. Are you an accountant?
A. Yes, sir.
Q. And what has been your experience as an accountant and how long have you been engaged in that business and what was your preparation for it, and what have you done since you entered into it?
A. I have been in the insurance business and accounting for 24 years; been one year with Mr. Baty as a public accountant.
Q. Well, what were your connections prior to the time you went with Mr. Baty?

A. Prior to that I was secretary and treasurer of the Chicago Bonding Agency Company; previous to that I was assistant secretary and treasurer and auditor of the Chicago Bonding & Insurance Company. Previous to that I was in local and general agencies in other companies, fire and casualty.

Q. This was all relating to the business of insurance, was it?

A. Yes, sir.

Q. And your activities with these various concerns were all in the line of their accountancy activities?

A. Yes.

Q. Are you familiar with their records and the method of keeping insurance records in general?

A. Yes, sir.

[fol. 2314] Q. Did you ever visit the offices of the Dubuque Fire & Marine Insurance Company in connection with the matters of this case?

A. I did.

Q. And were the tabulations which have been produced in evidence here respecting that company secured under your supervision?

A. They were.

Q. Did you verify and examine the books and records of that company to ascertain the correctness of the figures submitted here?

A. I did.

Q. Do those figures as here submitted, according to the best of your judgment, are they true and correct?

A. They are correct.

Q. Where did you examine the books and records of that company?

A. In the home office at Dubuque, Iowa.

Q. In the case of the St. Paul Fire & Marine Insurance Company, did you make a like examination respecting the books and records of that company?

A. I did.

Q. And where is their home office?

A. St. Paul, Minnesota.

Q. Is that where you made the examination?

A. That is where I made the examination.

Q. Did you verify the correctness of the various figures in the tabulations submitted respecting that company which have been put in evidence here?

A. I did.

Q. Are they true and correct according to their books and records?

A. They are.

Q. The Michigan Fire & Marine Insurance Company, did you make an examination of their books and records in like manner?

A. I did.

[fol. 2315] Q. Where is their head office?

A. Detroit, Michigan.

Q. Are the figures as submitted by that company in the record here true and correct according to your examination and inquiry?

A. They are.

Q. Give us a general idea of what you did in these various companies in respect to finding out whether their figures were correct; how did you go at it and what did you do?

A. I took their tax statement and underwriting expenses and also their ledgers and cash books and registers—loss registers, where it was necessary, and verified all figures, and also to get at the expenses paid in Missouri. Those expenses that should be in the State of Missouri, not chargeable to any other state. And also the home office expenses, that there were no expenses in the home office expense which should be charged to another state.

The Referee:

Q. You examined the expense account with reference to Missouri to ascertain whether or not there were any expenses in that account which should be charged to some other state, is that what you mean?

A. Yes. All we charged in that portion of that statement to Missouri expenses were Missouri expenses.

Mr. Folonie:

Q. In other words, you were trying to find out whether by mistake they had gotten expenses in there that did not belong in there, is that it?

A. That is the idea.

Q. And if you found such errors you would eliminate them, is that it?

A. That's the idea.

Q. Detroit Fire & Marine, did you make a like examination respecting that company?

A. I did.

[fol. 2316] Q. Where is their office?

A. Detroit, Michigan.

Q. Did you go there and examine their books and records?

A. I did.

Q. And are their tabulations as submitted in the evidence here, according to their books and records, true and correct?

A. They are correct.

Q. The Ft. Scott & National Insurance Company, did you make a like examination there?

A. Yes, sir.

Q. Where is their head office?

A. Chicago, Illinois.

Q. And are their figures as submitted here in evidence correct according to their books and records?

A. They are correct.

Q. Now, the Excelsior Insurance Company of the State of New York, did you—offered here this morning—did you supervise and examine the tabulation as to that company?

A. I did.

Q. I note that in that company's figures there are no figures for the years 1917, 1918, 1919, and 1920, but only for the year 1921. Why is that?

A. They are entered only in 1921; that is the first year they did business in the State of Missouri.

Q. Where did you examine the books of the Excelsior Insurance Company?

A. At the home office in Syracuse, New York.

Q. Did you go to Syracuse?

A. Yes, sir.

Q. And did you verify the correctness of these figures as here submitted from their books and records?

A. I did.

[fol. 2317] Q. And are those figures true and correct according to their books and records?

A. They are correct.

Q. The World Auxiliary Insurance Corporation, did you verify the correctness of these figures as they are offered here in evidence?

A. I did.

Q. And where did you examine those figures?

A. In the office of the Union Insurance Company of Canton at Chicago, Illinois.

Q. Is that where the World Auxiliary Insurance Corporation has its headquarters?

A. Yes.

Q. I note that for that company we have figures only for the years 1920 and '21. Why are the other three years omitted there?

A. The company was not entered in the State of Missouri in those years.

Q. And are the figures here submitted true and correct according to their books and records?

A. They are correct.

Q. Did you undertake to get the figures respecting the New York National Insurance Company?

A. I did.

Q. Where did you make inquiry respecting the books and records at the New York National Insurance Company?

A. At the Insurance Department of the State of New York in the City of New York.

Q. Is the New York National Insurance Company a going concern or is it out of business?

A. It is out of business.

Q. And in whose hands are its records, such as there may be?

A. I couldn't find any records.

Q. Well, in whose hands are their affairs—I will put it that way?

A. In the Insurance Department; in the hands of the In-
[fol. 2318] surance Department of the State of New York.

Q. To make a long story short, the Insurance Department of New York has taken charge of the company, winding up its affairs, have they not?

A. It was wound up about three years ago.

Q. Were you able to find any books and records of the New York National Insurance Company showing the pre-

miums, their expenses or their losses, during the period that they were in Missouri, of the period here in question?

A. There was one book which the New York Insurance Department had kept, but it showed automobile premiums collected and losses paid and was not segregated according to states.

Q. There was no way you could tell what part, even, of that branch of their activities related to Missouri, then?

A. No, I couldn't.

Q. From your experience as an accountant, do any of the records or books that you may have found of that company present any such information as would enable a determination of any part of the premiums, premium income or the losses or the expenses of that company in the State of Missouri during the period in question?

A. No, I couldn't find any of that information.

Mr. Folonie: Now, if the court please, as to this particular company, I have gotten as far as I can go with the proof of that company, and I will refresh the recollection of the court, if I may, as to our stipulation, so that I may have [fol. 2319] the court's direction as to whether I have performed my duty here, particularly with respect to seeking to secure the figures of this company, and I read part of our stipulation:

"It is understood by the parties that there are certain companies whose figures cannot be secured. As to such companies whose figures cannot be obtained because of their being in the hands of the Alien Property Custodian or because of their having discontinued business or for any reason deemed by the referee to be sufficient, it is agreed that the figures in such case shall be disregarded in reaching a determination of the issues herein."

I think I have brought myself within both the letter and the spirit of the stipulation, because this company has discontinued business and I have undertaken to go a little further with this witness than is perhaps strictly legally necessary to show in fact we have made an effort despite the fact they have discontinued business, and I think I shall ask for an indication from my opponent whether he thinks I have satisfied the spirit of the stipulation as to this company.

Mr. Jacobs: Well, I don't think, Your Honor, that counsel should ask me whether or not he has made sufficient proof in the case, or that he should ask me a thing of that kind.

Mr. Folonie: Then I will not insist on an answer by counsel. I thought probably the spirit in which we were approaching this matter under our stipulation, that I wanted the assurance not only of the court but of my opponent that [fol. 2320] I had seriously undertaken to satisfy them. I have gone perhaps beyond my strict legal necessities, and as long as counsel doesn't feel in as generous a spirit this morning as I supposed he would I will pass that along without resquesting anything further of him.

Q. The Scandinavian American Insurance Company. Did you make any effort to secure information respecting premiums, losses and expenses of that company?

A. I did.

Q. And is that company in business or not?

A. That company is not in business.

Q. And where did you go, if any place, with a view to ascertaining the experience of that company during the period here in question?

A. I went to the Svea Insurance Company's office in New York City.

The Referee: What insurance office?

A. The Svea.

Mr. Folonie:

Q. And what relation does the Svea Insurance Company have to this formerly existing Scandinavian American Insurance Company?

A. They reinsured the Scandinavian American.

Q. That is, at the time the Scandinavian American ceased the Svea reinsured their outstanding losses at that time, did they?

A. Yes, sir.

Q. And did you——

The Referee (interrupting): Pardon me, do you mean their outstanding losses?

Mr. Folonie: Their outstanding business.

The Witness: Their outstanding business, yes.

[fol. 2321] Mr. Folonie:

Q. And did you make inquiry there with a view to ascertaining and securing records of the Scandinavian American Insurance Company?

A. I did.

Q. Were you able to find any records there?

A. No.

Q. Are you informed or do you know of any other place where records of that company might be secured?

A. I was directed to the Fireman's Fund Insurance office in New York City.

Q. What relation did they have to the Scandinavian American?

A. Before the Svea reinsured them they were a reinsuring company for the fireman's fund.

Q. And did you find any of their records with this Firemen's Fund Insurance Company?

A. I found their 1921 tax statement and 1921 underwriting experience in the State of Missouri.

Q. You mean duplicates of the reports filed with the State of Missouri?

A. Yes, copies of the reports filed with the State of Missouri.

Q. What else did you find in the way of records?

A. That's all; and a letter showing they had filed in 1920, but no copy of what they had filed.

Q. That is all the records you were able to find?

A. That is all the records they had left.

Q. Were you able to secure any further information? As to places where you might secure records, except those places you have mentioned?

A. No other places where they might be.

[fol. 2322] The Referee:

Q. Might those reports be found in the office of the Superintendent of Insurance of the State of Missouri?

Mr. Folonie: The originals of those reports were filed and presumably would be in the office of the Insurance Superintendent.

The Referee: But no other documents?

Mr. Folonie: No other documents.

I might state, if the court please, that of course those instruments would not be accessible in our behalf, as they would be self-serving documents of the company, and there is no other books and records; but if our opponents think these figures are material and produce any of these figures, we shall make no objection to their being put in the records, if they think they have any bearing on the question. The Aachen & Munich Insurance Company, the Hamburg Bremen Insurance Company, the Mannheim Insurance Company, the Nord Deutsch Insurance Company, and the Prussian National Insurance Company, what is the situation as to that group of companies?

A. Those were the German companies which were placed in the hands of the Alien Property Custodian at the time of the war.

Q. Did you make any inquiry in New York City respecting those companies and their records?

A. I did, I tried to locate the office of the Alien Property Custodian in New York. I couldn't find an office. I asked in the Insurance Department of the State of New York, and they told me that there was no office any more in the City of New York.

[fol. 2323] Q. There had been one at one time and it had been closed?

A. Yes, they had had two or three offices there, but they all had been closed.

Q. You didn't secure any of those German companies?

A. No, I could find no record.

Mr. Folonie: That is all with this witness.

Cross-examination by Mr. Jacobs:

Q. Mr. Werth, you say that you are employed by Mr. Baty?

A. Yes, sir.

Q. And have been for a year past?

A. And have been for a year past.

Q. And during that time have been making the calculations for the various companies involved in this particular lawsuit?

A. I have made some.

Q. Well, I mean that has been your work during the past year?

A. Oh, no, I have done other work in addition to that.
Q. You have done other work in addition to that?
A. Yes.
Q. And likewise you have been engaged in this work?
A. I have assisted him on this work here.
Q. Now, Mr. Baty's company is named what?
A. Arthur S. Baty.
Q. And he is located where?
A. Chicago, Illinois.
Q. And he is the accountant for the insurance companies?
A. Well, that you will have to ask him.
Q. Have you managed to learn that during the year that you have been associated with him?
A. No.
Q. You haven't learned that?
A. No.
[fol. 2324] Q. Don't you know anything about that?
A. No.
Q. Now, with reference to these German companies about which you just testified, you say you made a diligent search in the City of New York to find out whether the Alien Property Custodian had an office here?
A. I did.
Q. Did you search anywhere else besides New York City?
A. No.
Q. Did it occur to you that the Alien Property Custodian's offices might be in the City of Washington?
A. I found that out in New York.
Q. Did you go to Washington?
A. No.
Q. Did you make any effort to get these records there?
A. No.
Q. You know Mr. Tom Morley, the Alien Property Custodian?
A. No, sir.
Q. Did you know his predecessor?
A. I don't think I did.
Q. You do know, though, that the Alien Property Custodian's office is centrally located in the City of Washington; I mean his main office; if not the only office he has, is in the City of Washington? Don't you know that?
A. No, I don't.

Q. You learned, however, he did have an office in Washington?

A. Yes, sir.

Q. Did you learn he had offices anywhere else besides Washington?

A. No.

Q. Did it occur to you you might find these records at his office in the City of Washington?

A. Well, I didn't go any further.

[fol. 2325] Q. You just didn't go any further than New York?

A. I just came back to Chicago and reported.

Q. These several German companies about which you have testified, do you know how long they did business in the State of Missouri within the period from 1917 to '21, inclusive?

A. No, I do not.

Q. With reference to the other companies that you spoke about, the Scandinavian Insurance Company which was reinsured by another company, by the Svea Company, in New York; did you make any investigation beyond going to the Svea Company and to the Firemen's Fund of the City of Chicago for the purpose of finding their records?

A. They told me at the Svea that the records had been destroyed.

Q. They destroyed all the records up until when?

A. I don't know how long.

Q. Do you know when the American Scandinavian was reinsured?

A. No, I don't.

Q. Did you make any inquiry concerning that?

A. No.

Q. Do you know whether it was in the period, the five year period under investigation in this particular hearing?

A. No.

Q. May or may not have been, is that right?

A. Yes; may or may not have been.

Q. And the Svea people you say told you that the records had been destroyed?

A. Yes.

Q. How came they, if you know, to refer you, then, to the Firemen's Fund of Chicago?

A. They wanted to aid me in securing these figures if [fol. 2326] possible and thought the Firemen's Fund might have some records over there which they didn't send to them.

Q. Did the Svea Company take over all the records at the time they reinsured this company?

A. They took over the books. They didn't take over all of the records.

Q. When they reinsured the company they took over their liabilities, didn't they?

A. I presume so.

Q. That is what reinsurance means, isn't it?

A. Well, I don't know how reinsurance is done.

Q. Don't you know what reinsurance means?

A. Yes, but you can reinsure without taking over the entire company.

Q. But my understanding of your former testimony was that they took over the entire company and then the Scandinavian went out of business?

A. Yes.

Q. So in that particular instance they took over their liabilities?

A. Yes.

Q. They also took over their assets, didn't they?

A. Yes.

Q. Well, didn't they have a record of this company, of what their liabilities and what their assets were when they took them over?

A. They must have had that.

Q. Could you find it?

A. I didn't look for that. I was looking for the Missouri figures.

Q. Well, wouldn't the Missouri figures be included in their records concerning their liabilities and assets?

A. Well, maybe not by the State of Missouri.

[fol. 2327] Q. Did you look to see?

A. No, they told me they had no records showing it.

Q. And you didn't look any further?

A. No.

Q. Of course, when they reinsure an entire business as the Scandinavian American did with the Svea Company—a company that reinsures its entire business, *as the Scandi-*

navian American did with the Svea Company would in the course of events and according to insurance experience show a considerable profit in the ceding company, wouldn't it?

A. Well, I don't know. I would have to see the figures.

Q. Have you investigated that phase of the reinsurance of the entire business of a company?

A. No.

Q. You don't know about that?

A. I haven't investigated that.

Q. These figures that you went over, say for the Detroit Fire & Marine, did you compare your ultimate calculations with the reports made to the State of Missouri with reference to that particular company?

A. I did.

Q. Did you learn that your present figures, which have been offered in evidence, with reference to that company, shows an average of from 2 to 4 per cent increase in the expenses over the reports made to the State of Missouri in this five year period?

A. I don't know what the calculations at the end showed.

Q. You didn't figure that?

A. No.

Q. Did you figure the experience of that particular company in conjunction with the reports which the company had annually been making to the State of Missouri?

A. No.

[fol. 2328] Q. So you don't know whether that is a fact?

A. No.

Q. You don't know, then, whether the annual reports to the State of Missouri were correct or incorrect?

A. No.

Q. With reference to the Dubuque Fire & Marine Company: Do you know whether or not the figures which you ultimately produced showing the experience of the company show an average increase of from 2 to 8 per cent over the expenses shown by that company, made annually to the State of Missouri?

A. No, I don't.

Q. You didn't investigate that?

A. No.

Q. You made no comparison between the two sets of figures?

A. No.

Q. You don't know whether the reports of the company are correct or not as made to the State of Missouri, do you?

A. No.

Q. Have you any notion from your insurance experience what the profit is to a ceding company when it cedes its entire business in an insurance matter to another company?

A. No, I haven't.

Q. Were there any other companies besides the Scandinavian American which ceded their entire business, among those companies whose figures you failed to get?

A. Yes, the New York National.

Q. Now, to whom did the New York National cede?

A. New York National was liquidated.

Q. By whom?

A. By the Insurance Department of the state.

Q. Did some company reinsure their business?

A. No.

[fol. 2329] Q. They were entirely liquidated?

A. They were entirely liquidated.

Q. Were you able to get the figures of that company?

A. No, sir.

Q. To whom did you go to get them?

A. I went to Mr. Hughes, auditor and actuary of the New York Insurance Department, and he directed me to Mr. Clarence Fowler of the Liquidation Bureau of the New York Insurance Department.

Q. And you were not able to get any records?

A. No; no records. They said all they had was an annual statement filed with the state of New York, and this register which I have previously mentioned.

Q. You mean by that you were unable to get the reports made to the State of Missouri by this company?

A. No; their books and records.

Q. Were you looking for the reports made to the State of Missouri?

A. I was looking for those so as to check them with the books and records.

Q. You wanted the annual reports?

A. I would have needed the annual reports, of course.

Q. Made to the State of Missouri, in order to check the records?

A. Either to the State of Missouri or to the State of New York.

Q. But you were particularly concerned in this matter with the reports made to the State of Missouri, weren't you?

A. Yes.

Q. Did you make any effort to secure copies of your annual statement records made to the State of Missouri by that company from the office of the State Insurance Department?

A. At Missouri.

Q. Yes.

A. No.

[fol. 2330] Q. Did you know you could get that information there?

A. I didn't investigate that end of it.

Q. You didn't investigate that end of it?

A. No.

Q. Well, now, if it was necessary for the purpose of checking your figures, why didn't you investigate it?

A. Well, I was instructed only to secure these figures, by Mr. Baty.

Q. What figures?

A. Figures for the State of Missouri; business done in the State of Missouri.

Q. You understand, don't you, Mr. Werth, that these various stock fire companies make three reports to the State of Missouri each year?

A. Yes.

Q. An annual report, statement report and tax report, and another report?

A. I do.

Q. And underwriting report?

A. Yes.

Q. Now, those are made, as you understand, by the officials of the various companies?

A. Yes.

Q. Doing business in the State of Missouri?

A. Yes.

Q. And under oath by those officials, you know that, don't you?

A. Yes.

Q. Didn't you think that was an accurate source for this information, to get them from the Department of Insurance of the State of Missouri?

A. Well, that would be up to Mr. Baty.

Q. But, you were simply not instructed to get them in that way?

A. No.

Q. You were instructed to go to these places you have described in an effort to get these records?

A. Yes.

[fol. 2331] Q. Now, have you gotten a mere copy in the files of some company back there, you wouldn't have had a verified copy such as you would have had if you had gotten one on file with the State of Missouri, would you?

A. No.

Q. With reference to the Scandinavian American Company, you likewise wanted the reports annually made to the State of Missouri, in verifying your figures there, didn't you?

A. I did.

Q. Did you make any effort to get them from the Department of Insurance, of Missouri?

A. No.

Q. So you simply went on without them?

A. I did.

Q. Now, as a matter of fact, Mr. Werth, you could have gotten from the Insurance Department the figures for all these companies that you sought for the purpose of checking your figures, from the state department—State Insurance Department, couldn't you?

A. I suppose so.

Q. You know they are made annually?

A. I know they are made annually and filed and supposed to be kept.

Q. And become a public record?

A. Yes.

Mr. Jacobs: I think that is all.

Mr. Folonie: That is all.

(Witness excused.)

[fol. 2232] Russell D. Hobbs, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name?
A. Russell D. Hobbs.

Mr. Folonie: It occurred to me, if the court please, I might possibly have misled counsel by the form of my statement when I said I intended to recall these witnesses generally. I don't intend to recall Mr. Werth, so while he is still in the room I make that announcement. Mr. Hobbs and Mr. Baty I am putting on now on this special question, and I expect to recall and finish with them later.

The Referee: Do you wish to cross-examine Mr. Werth further?

Mr. Jacobs: No.

The Referee: Then he is at liberty to go when he sees fit.

Mr. Folonie:

Q. What is your name, now?
A. Russell D. Hobbs.
Q. And what is your business?
A. Fire insurance actuary.
Q. With what organization are you connected?
A. Western Actuarial Bureau.
Q. In what capacity?
A. Assistant manager.
Q. What is the general nature of the business of the Western Actuarial Bureau?
A. The Western Actuarial Bureau was organized by Mr. J. V. Parker in about 1906. Mr. Parker had been engaged for some time in compiling a work on the analytic system for the measurement of relative fire hazard. He saw the [fol. 2333] need of an organization, a special organization to handle the publication, sale and distribution of that book, as well as a clearing house for the study and discussion of matters relating to fire hazard and fire prevention. The publications of that office are sold to various inspection and rating bureaus and companies, stock fire, mutual, reciprocal, and to various individuals who have an interest in the fire insurance business and matters contained in that book.

Q. I want to interrogate you at a later time further as to your own experience and as to the business done by your office, but I think this suffices for me for my present purpose: Have you in connection with your duties in the office you mention been associated in the work of preparing and securing from the various companies interested their figures respecting premiums, losses and expenses for the period under consideration and inquiry in this present suit?

A. I have.

Q. Mr. Baty, who has been mentioned, who has been actively engaged in securing these figures and has been working under your supervision, your general supervision and direction, has he?

A. He has.

Q. Now, in connection with the securing of these figures, and directing your attention to particular companies, I direct your attention to the case of the American Druggists' Fire Insurance Company. Have you undertaken to secure from that company any figures respecting the premiums and losses and expenses for the period in question?

A. I have.

[fol. 2334] Q. Does that company engage in general fire insurance, or do they confine their activities to a special department or class of business?

A. I understand it is only a special class.

Q. And what is that?

A. Drug stores.

Q. Have you been able to secure from that company any figures or any returns?

A. I have not.

Q. Now, your routine method of handling this matter and securing the figures has been to secure figures from these various companies and then have Mr. Baty go out and verify them and ascertain whether they are correct according to their books and records, has it not?

A. Yes, sir.

Q. This American Druggists Fire Insurance Company was a party to this lawsuit originally, was it not?

A. It was.

Q. And they have since been withdrawn as a plaintiff at their direction, have they not?

A. That is true.

Q. And was it upon explicit instruction from that company that they be withdrawn as a party to the suit?

A. Their general counsel and manager requested that they be withdrawn.

Q. And have they declined to participate in furnishing figures or giving you any aid in the matter?

A. They have.

Q. Does that company write its business at the stock fire rates promulgated by the Missouri Inspection Bureau, like the other companies do?

A. They have stated that they write their business at 25 per cent less than the rates published by the Missouri Inspection Bureau.

[fol. 2335] Q. And file a deviation to that extent with the Insurance Department to show that they are not bound by the rates of the other companies?

A. They have so stated.

Q. Is this letter of April 11, 1923, is that one of the communications received from them in the course of your correspondence in trying to get these figures from them?

A. It is.

Q. And was this letter received in the regular course of your efforts to get information from them?

A. It was.

Q. This letter was not secured with a view to using it as evidence at the time it was secured, I assume?

A. It was not.

It was received in response to my request for the information we needed.

Mr. Folonie: We offer the letter in evidence, if the court please. In substance it is a refusal to participate in the suit or furnish information, stating that they are not writing at the rates of these other companies and any reduction would not affect them anyway, because they write at 25 per cent less and don't write at the Bureau rates and don't want to bother with it.

The Referee: Attitude of the innocent bystander.

Mr. Folonie: Yes.

Mr. Jacobs: We have no objection to this offer.

[fol. 2336] Mr. Folonie:

Q. The Marine & Motor Insurance Company, have you tried to get information from them respecting the premiums and losses and expenses?

A. I have.

Q. Did you send to them the same communications that you sent to all the other companies involved in this matter, asking them for their information from their records?

A. I have.

Q. And have you been able to get anything from them at all?

A. I got no response to any inquiry.

Q. Where are they located? Is this a Texas Company?

A. It is my recollection they are at Galveston, Texas.

Q. Have you made examination in the official reports of the Missouri Insurance Department as to how much their business amounts to?

A. I have.

Q. Have you a tabulation you made there to show the scope of their business?

A. Yes.

Mr. Folonie: I will state to the court the primary purpose in offering this is to show the amounts involved are so insignificant that they wouldn't reflect the result whether included or excluded, and the expense of sending a person down to Texas would be out of all proportion to any possible bearing it would have on the law-suit—and we probably wouldn't get it then, from them.

Q. Now, will you state their experience according to Missouri published reports of the Insurance Department during the period in question?

[fol. 2337] A. In the year 1920 they wrote insurance premiums of $7,105. I will give first the premiums—losses on fire insurance as reported to the Missouri Department: $7,105 gross premiums. $5,150 net premiums. Paid losses, $654. Incurred losses, $654.

On classes other than fire; Gross premiums, $4,148. Net premiums, $1,955. Paid losses, $332. Incurred losses, $332.

In 1921, fire insurance, gross premiums, $3,605. Net premiums, minus $1,564.

Q. How could they have a minus premium? What does that mean?

A. That means that they returned that year to their policyholders more than they wrote.

The Referee: Returned more premiums than they charged?

A. They returned more premiums to the policyholders than they wrote that year; part of the business written the year before had been canceled.

Losses paid, $7,384. Losses incurred, $7,384.

Mr. Folonie:

Q. How would you figure the percentage of profit or loss against a minus premium figure and a plus expense and loss figure?

A. I don't know.

Q. Go ahead.

A. On classes other than fire, gross premiums, $354; net premiums, minus $639; paid losses, $1,362; incurred losses, $1,362. That makes a total for the three years of fire premiums, $10,710 gross; net, $3,586; paid losses, $8,038; incurred losses, $8,038.

[fol. 2338] Classes other than fire, a total of $2,402 gross premiums; $1,320 net premiums; $1,694 paid losses, and $1,694 incurred losses.

Q. The Cleveland National Fire Insurance Company, are they in business or have they quit?

A. They have discontinued.

Q. And did you undertake to see any of the officials of that company?

A. I did.

Q. Where were they in business when they did do business?

A. Cleveland, Ohio.

Q. Who was their manager?

A. Archibald Kemp.

Q. What was his office when they were in business?

A. Secretary and general manager.

Q. Did you see this secretary and general manager, Mr. Kemp, since this inquiry has been proceeding?

A. I did.

Q. Where is he now or where was he when you saw him?
A. Newark, New Jersey.
Q. And when we were in New York on the hearings there did you go over to New Jersey to see him at that time?
A. I did.
Q. And who is he with now?
A. The Firemen's Insurance Company.
Q. And employed by them in some capacity?
A. I believe assistant secretary.
Q. And did you make inquiry from him with a view to getting the records of that company?
A. I did.
Q. Of the Cleveland National?
A. I did.
[fol. 2339] Q. And did he have them?
A. He did not.
Q. Were you able to find any of the records of the company?
A. I was not.
Q. Was it you or Mr. Baty that made inquiry at the Niagara offices about their books and records?
A. It was Mr. Baty.
Q. They were reinsured when they quit business by the Niagara, were they not?
A. The Niagara reinsured their outstanding liabilities but did not take over their assets.
Q. You were not able to get any of their books and records at all?
A. I was not able, no, sir.

Mr. Folonie: I might say that it was because of that peculiar situation of another fire insurance company reinsuring their outstanding liabilities and their assets being taken over by someone else, that the records wouldn't be available.

The Referee: One party or another would have them, would they not?

The Witness: I believe so, Judge. I believe they would, but Mr. Kemp stated that the books had been taken over by the—stated first that the books were in very bad condition and they were taken over by the finance company who took over their assets and that they were not interested in any way in the insurance transactions of the company

before the liquidation or after, and consequently there had been on care taken of the records other than the financial records.

Mr. Folonie:

Q. They organized a finance company which took over the securities and continued running the security or in-
[fol. 2340] vestment end of the business distinct from the fire insurance business, is that it?

A. That is as Mr. Kemp explained it to me.

Q. And then the fire insurance business was taken over by the Niagara Fire Insurance Company?

A. Yes.

Q. Was this a small or a large company, this Cleveland?

A. I would consider it a small company.

Q. The National Traders Fire Insurance Company, where were they located when they were in business?

A. That is the National Trades Company.

Q. Yes, that's right.

A. Their head office was at Chicago.

Q. Are they in business or have they discontinued?

A. They have discontinued.

Q. And are they in the hands of receivers, do you know?

A. I don't believe so. I believe they merely liquidated themselves.

Q. Have you been able to get any information or records from them?

A. I have not.

Q. Do they have a telephone in Chicago?

A. No, sir.

Q. Do they have any offices that you know of?

A. No, sir.

Q. Have you sent communications addressed to their former address, the same communications you have sent to these other companies?

A. Yes, sir.

Q. Get any response?

A. No, sir.

Q. Have you any memorandum of any kind to show how many years they were in Missouri and how much business they had when they were here?

A. I don't believe so. They wrote a very, very, small amount.

[fol. 2341] The Referee: Were your letters returned?

A. It is my recollection that they were returned. I might state that it was 1921 that this company started to liquidate and I had other dealings with them at that time, in trying to collect a bill which they owed. I received a letter from a former officer of the company, gave no address, and stated that the company was out of existence and that there was no one who would be responsible for any of the transactions of the company.

Mr. Folonie:

Q. Now, it was a bill your organization had against them for services, was it?

A. Yes.

Q. And you couldn't get it?

A. No.

Q. All right. Have you any of those Missouri Insurance Department reports with you to show the scope of their business?

A. They are in my room.

Q. I don't know whether that refreshes your recollection as to what we looked upon those or not—or would you rather get the report and look at it?

A. I would rather get the report.

(Report sent for.)

Q. I wish when this report comes to show the Missouri Department reports as to the scope of their business, which I think will show that their total premiums only ran into a few hundred dollars during the period they were in the state. I don't think it will amount to a thousand dollars for the period they were in business here. It is not my claim that in putting in these figures from the insurance report that they are competent to show what the figures in fact are, but to satisfy the court that the amount involved is so trivial that leaving them out of consideration will not [fol. 2342] affect the conclusions of the court. That is the primary purpose of the figures.

That will be all with this witness, Mr. Jacobs, except to [fol. 2343] insurance companies. In this case I think it surance Company when the state report comes down.

Cross-examination by Mr. Jacobs:

Q. What was the name, Mr. Hobbs, of the company about which you testified from this tabulation in front of you here?

A. You mean—Marine & Motor Insurance Company.

Q. Is that that Texas company?

A. Yes, sir.

Q. What various branches of insurance is it engaged in?

A. Why, it is my understanding that they wrote principally automobile insurance and principally reinsurance of automobiles.

Mr. Folonie: Are they in the State of Missouri any more?

A. No.

Mr. Jacobs:

Q. Were you reading from the figures when you testified a while ago concerning fire, or that tabulation headed "other than fire"?

A. I read both.

Q. Well, do you know what "other than fire" includes?

A. Why, I presume it includes what the name would signify, other classes of insurance.

Q. Surely, but——

A. (Interrupting.) By that answer I didn't mean—it didn't sound just the way I meant it. I meant by that that other classes of insurance commonly written by stock fire [fol. 2343] insurance companies. In this case I think it means purely marine business; automobile marine.

Q. I see you only have two years on fire for that company, 1920 and '21, haven't you?

A. Yes.

Q. You haven't got the three preceding years?

A. They were in the State of Missouri for that time.

Q. Just for these two years?

A. Yes, sir.

Q. You know nothing about the correctness of these figures, do you?

A. I merely copied them from the insurance department report.

Q. That was made by this company?

A. It was published by the Missouri Insurance Department.

Q. But made by this company to the Insurance Department?

A. Yes.

Q. You know nothing about the correctness of them, do you?

A. No.

Mr. Jacobs: I think that is all.

Redirect examination by Mr. Folonie:

Q. National Trades Fire Insurance Company is the one we were looking up. I suggest you go from 1921 and travel back because I think they were only in here the last year or so.

Mr. McGee: I would suggest that the National Trades Fire Insurance Company was previously known as the National Brewers Fire Insurance Company and that it changed its name during this period.

Mr. Folonie: I will state into the record that I didn't know that until now.

[fol. 2344] The Witness: The report shows that in the year 1921 they wrote——

Mr. Jacobs (interrupting): One minute. Before you begin the testimony, what is the book you are reading from there? You are testifying from reports filed by his company?

A. I am testifying from the published reports of the Missouri Insurance Department.

Mr. Jacobs: Well, that is the report filed by this company.

Mr. Folonie: Read the preface there.

The Witness (reading): "23rd Annual Report of Superintendent of Insurance Department for the year ending December 31, 1921. Ben. C. Hyde, Superintendent."

Mr. Hogsett: I call the attention of the court to the fact that it has previously been proven in evidence that these

reports—the information filed in them is regarded as authentic in the insurance business, and that is in evidence.

Mr. Jacobs: Well, insofar as that constitutes a copy of some report made by the various companies.

Mr. Hogsett: Well, the testimony was not limited in that way. The fact is the report is made—is a compilation of reports made by companies to the Insurance Superintendent, which he compiles and puts in published form.

The Referee: It is admitted, is it not, that the book which the witness has before him is published by the State of Missouri, is it not?

Mr. Jacobs: That is admitted, yes.

[fol. 2345] The Referee: And is it or not admitted that the book correctly sets forth such information as is printed in that book from the reports of the various companies mentioned therein?

Mr. Jacobs: As made to the state by those companies, yes. I want to call the court's attention to the fact that this testimony by a witness concerning a report made by some other company, that that is what it is; that this witness knows nothing about the accurateness of the figures as a matter of fact and as a matter of fact all but a few of these companies that are especially referred to in this fashion have practically denied the figures of their reports and changed them in the testimony in this case from what they appear in the office of the insurance department.

Mr. Folonie: We are not producing these figures with a view to establishing the figures, as proof of the figures themselves. We are producing them with a view to satisfying the commissioner under our stipulation that he would be warranted by the facts in leaving the figures of those companies out of consideration in his final conclusions.

Mr. Jacobs: Well, is this company a party plaintiff in this proceeding?

Mr. Folonie: I don't know whether it is or not.

Mr. Jacobs: Is it joined as a party plaintiff?

Mr. Folonie: I don't know. I would have to look up and see. I've got so many clients I can't keep track of them, you see.

[fol. 2346] As to such companies, if there are certain companies whose figures cannot be secured by reason of being in the hands of the custodian (reading from stipulation)

* * * and it is agreed that the figures of such companies shall be disregarded in reaching a determination of the issues herein.

Now, that leaves a discretion in Your Honor as to whether we are warranted in leaving them out of our calculations after all efforts we have made, and if you are satisfied that they wouldn't affect the ultimate conclusions in the case and that they may well be eliminated, why, your statement that you are satisfied to leave them out will operate then to obviate the necessity of proof of the figures of those companies. Your Honor will note how very few the companies are about which we are making proof here that are omitted at all.

The Referee: Might not this get at the gist of the whole matter: Can counsel agree that the amount of business done by these companies is relatively so inconsiderable as not materially to affect the result of this case?

Mr. Jacobs: Well, I would have to talk to Mr. McGee about it.

Mr. Hogsett: As a side-light, we might suggest this, Mr. Jacobs: That it is a fair—as to whether you can properly make that agreement, it might be fair to assume that companies failing would certainly not be making much money, that is it wouldn't hurt the state, aside from the in-[fol. 2347] consequential volume of the business, companies that are failing wouldn't, in all general probability, be making money in the state.

The Referee: Not enough to justify a reduction in rate, perhaps.

Mr. Jacobs: It occurs to me this is an incompetent method of proof and some of them may have failed, of course, and some for other reasons, namely, those taken over by the Alien Property Custodian, and then there are the companies that are reinsured.

Mr. Folonie: They were all taken over in about 1918 and only in about one year of your period.

Mr. Hogsett: This much will be established: We will have offered—in fact, have offered, I think, figures that total about 143 companies whose figures are in evidence. Now, those that are not offered and cannot be obtained will not exceed how many, Mr. Hobbs? Eight or ten?

The Witness: No, about fifteen.

Mr. Hogsett: Fifteen. Those are companies—the German companies, of course, went into the hands of the Alien Property Custodian in 1917, which is the first year involved here. They just stopped short off, so that they didn't do enough business to amount anything. The small companies that did a business not to exceed one thousand or ten thousand in volume of course wouldn't be a white chip in this controversy.

Mr. Jacobs: I think those small companies, it would be better to leave them out than to go into a form of proof of this kind that is not a proper form of proof and might result in a good deal of misunderstanding in this matter.

[fol. 2348] Mr. Hogsett: What do you suggest, then, as a way of handling it?

Mr. Jacobs: Well, a company of this kind, if it didn't do any business I don't see any reason for going into the matter.

Mr. Hogsett: Then let's wipe this out by an agreement that the figures of those companies, naming them, shall be disregarded.

Mr. Jacobs: Well, give us a list of the companies so I can look it over.

Mr. Folonie: I will read them off now if you wish.

Mr. Hogsett: Or if you want to look them up you can do that.

Mr. Jacobs: All right.

Mr. Folonie: Well, there is the National Trades Fire Insurance Company. Do you agree that it may be eliminated from consideration?

Mr. Jacobs: Yes.

Mr. Folonie: There is the American Druggists Fire Insurance Company. That is the one that writes 25 per cent under the rates anyway.

Mr. Jacobs: All right.

Mr. Folonie: The Marine & Motor Insurance Company, that is this little Texas company that had minus in its figures.

Mr. Jacobs: All right.

Mr. Folonie: Cleveland National, that is the one that Mr. Hobbs testified about seeing the manager down in Newark.

Mr. Jacobs: Saw him where?

[fol. 2349] Mr. Folonie: Down in Newark, now working for the other companies.

Mr. Jacobs: There was no available testimoney concerning that company, was there?

Mr. Folonie: No.

Mr. Jacobs: Well, put that one down.

The Referee: Can't you refer to the report right now and determine the matter?

(Mr. McGee examines report.)

The Referee: Have you named all the companies you desire to name there?

Mr. Folonie: No. Cleveland National was the last one, and it is agreed that they be eliminated. Now, when I notified counsel I had sent him all the figures I was going to send him he called attention to the London & Provincial Insurance Company as not being included in my figures. I find on investigation they were not admitted in the State of Missouri until 1922, and therefore were not admitted at the time in question.

Mr. McGee: They were admitted in December, December 13, 1921, so they were in two weeks.

Mr. Jacobs: We can disregard them, then.

Mr. Folonie: Pittsburgh Fire Insurance Company, we have had Mr. Baty run them around from one place to another where they have been bought and sold three different times and they moved their office from Pittsburgh to Chicago and two or three different places, and we have been unable to find any figures or any office. In the year 1921 I have a notation of premiums amounting to $1,791, and their losses $2,000 in that year.

[fol. 2350] Mr. McGee. They didn't come in until 1921.

The Referee: That company is eliminated.

Mr. Jacobs: All right, eliminate that.

Mr. Folonie: The American Merchants Fire Insurance Company, that company was reinsured in the year 1922 by the Liberty Fire Insurance Company. The American Merchants was a Kansas City company, reinsured in 1922 by the Liberty Fire Insurance Company of St. Louis. They have no books and records and we have been unable to get figures, and the amounts involved are very small.

The Referee: What about the volume of their business, Mr. McGee?

Mr. McGee: Not very much volume, I don't think. I don't remember.

(Witness examines report.)

Mr. Jacobs: Eliminate them, then.

Mr. Folonie: By the way, we have discussed this before the hearing and counsel has given me a list of those he thought I had skipped or failed to cover, and he calls my attention to the British & Foreign Marine Insurance Company. That company was not a stock fire insurance company and did no fire insurance business in the State of Missouri during any of the period in question, but did only a marine business. Is that correct, Mr. McGee? The British & Foreign Marine Insurance Company did no fire insurance business during the period in question, and by agreement now is excluded from consideration.

[fol. 2351] The same identical situation exists as to the Indemnity Mutual Marine Insurance Company.

The Referee: What about that company, gentlemen?

Mr. McGee: That was entirely marine business.

Mr. Jacobs: Cut it out, then.

Mr. Folonie: The Colonial Insurance Company was in this state at least during part of the period.

Mr. McGee: All of it.

Mr. Folonie: I have no record of how long. And they were reinsured by the United States Fire Insurance Company and ceased business. We have been unable to find their records either at the former office or at the offices of the United States Fire Insurance Company.

Mr. Jacobs: Let's eliminate them.

Mr. Folonie: The Guaranty Fire Assurance Corporation is in identically the same situation and was also reinsured by the United States Fire Insurance Company, and we have been unable to get records at either their former office or——

Mr. McGee (interrupting): They were in about a year and a half.

Mr. Folonie: They were in the state less than two years and wrote a very small volume during that time.

Mr. Jacobs: Eliminate them.

Mr. Folonie: The Reliance Marine Insurance Company, to which my attention has been called by opposing counsel

as a company did a marine business only and no fire business during the period in question. Their total premiums in the State of Missouri in the year 1921, I have a note here, were $169.

[fol. 2352] Mr. Jacobs: We can get along without them, I think, then.

Mr. Folonie: The same situation exists as to the Standard Marine Company, which was purely a marine company.

Mr. Jacobs: Eliminate that one.

Mr. Folonie: The Underwriters and American Lloyds have been eliminated, if the Court please, upon the ground that they were not a stock fire company. It is a Lloyd's organization, not incorporated, and doing business representing individuals who operate by virtue of powers of attorney, and it has been eliminated from our figures on the theory it was not a stock fire insurance company; and I might say, if the Court please, that this is somewhat of a border-line situation. For instance, there are mutual companies, also which operate on both the mutual and the stock plan in doing business, and we have left those out of consideration also, believing they were not within the spirit of the statute relating to stock fire insurance companies, and this falls somewhat in that same group or classification and that is our reason for omitting it from our figures.

Mr. McGee says there is no provision in law for licensing a Lloyds company, and this has been licensed over a long period and the license is issued to it as a stock company because there seems to be no other class in which to throw them, and that agrees with our understanding as to how they happen, in the state group, to be classified with them. I think it may readily be conceded they don't belong there, [fol. 2353] but at the same time for other purposes we had to classify them some way.

Mr. Jacobs: Eliminate them.

Mr. Folonie: Scandinavian American, we have already offered proof as to them and I suppose we cannot—suppose we can eliminate them.

Mr. Jacobs: Eliminate it.

M. Folonie: Now, the New York National Insurance Company, about which Mr. Werth testified, which is in the hands of the New York Insurance Department for liquidation.

Mr. Jacobs: Eliminate them.

Mr. Folonie: Scandinavian-American Insurance Company, that is the one that was reinsured by the Svea.

Mr. Jacobs: Eliminate that one.

Mr. Folonie: That leaves only the alien companies that were in the hands of the Alien Property Custodian, the Aachen & Munich, Hamberg-Bremen, Mannheim, Nord Deutsch, and Prussian Nation.

Mr. Jacobs: Now, were those alien companies taken over by the Alien Property Custodian in 1917?

Mr. Folonie: Yes.

Mr. Jacobs: And did they do any business thereafter in the State of Missouri?

Mr. Folonie: No.

Mr. Jacobs: Then I can see no reason why their experience would cut any figure in the State of Missouri for the period in question.

Mr. McGee: They were in about eight months in the year 1917.

[fol. 2354] Mr. Jacobs: I think we had better eliminate them.

Mr. Folonie: Now, we have the figures in for the other stock fire insurance companies in the state, if the Court please, and we have some computations and calculations and so forth on those which I think we can probably present with great gusto after lunch.

The Referee: It is now twenty past twelve. We will adjourn until two o'clock this afternoon.

(Whereupon, pursuant to order of referee, the further taking of testimony was adjourned until two o'clock in the afternoon of the same day, at which time parties reconvened at the same place and the following proceedings were had:)

The Referee: Proceed, gentlemen.

Russell D. Hobbs, was thereupon recalled as a witness on behalf of the plaintiffs, having been previously sworn, and was examined and testified further as follows:

Redirect examination (continued) by Mr. Folonie:

Q. What is your name?

A. Russell D. Hobbs.

Q. You are the same Mr. Hobbs who was interrogated at the hearing this morning in this matter?

A. Yes, sir.

Q. Mr. Hobbs, what was your study in college or university preparatory to entering on the business in which you are now engaged and your experience since entering into it—giving the dates and the periods during which you were engaged by various organizations in the line of fire insurance.

A. In the fall of 1904, I entered the University of Chi- [fol. 2355] cago to take a course in what is known as Science College, preparatory to taking an engineering course in the East. I attended the University of Chicago from the fall of 1904 until June, 1907, with the exception of six months when I was employed by the Rock Island Railroad with a surveying party in the North Central part of Kansas. My work in school was largely in chemistry, physics and mathematics. I was endeavoring to take all of the work in the line required in an engineering course; I expected to go to Massachusetts Institute of Technology. My finances did not permit it and I left college in 1907 and I was in the advertising business in Chicago for two years.

In January, 1909, I went to Oklahoma City to visit some friends and in the early part of February of that year I was employed by the Oklahoma Inspection Bureau at Oklahoma City, who were engaged in making fire insurance rates for the State of Oklahoma. I remained with the Oklahoma Insurance Bureau until January, 19—well, I am not, sure, 11 or 12, when I came to the State of Missouri temporarily, to assist them in re-rating the State of Missouri.

Q. What do you mean by "re-rating" them?

A. They were making at that time a complete re-rating of the state.

Q. The term re-rating is what I am directing your attention to.

A. They were re-inspecting and making new rates on all property in the state.

My work consisted of being in charge of a crew of men who were re-rating the cities of Hannibal and Moberly. I

[fol. 2356] remained in Missouri three months, when I returned to Oklahoma and continued there until September, 1915, when I went to Indiana on a similar mission to the one I performed in Missouri.

I remained in Indiana, having charge of the re-rating of two cities at one time, Wabash and Peru, and on December 1, 1915, I went with the Western Actuarial Bureau at Chicago.

Q. Before leaving Oklahoma, will you tell the general nature of the business and duties you were performing in Oklahoma while you were there?

A. In Oklahoma I had charge of the inspection work in Oklahoma City, which was then the largest city in the state, and I traveled throughout the state inspecting and appraising property; inspecting waterworks and all classes of property, from country stores to oil refineries.

Q. Now, you mentioned going into the Western Actuarial Bureau. Tell us a little more about who and what they were and about what you have done there.

A. I went with them for the purpose of taking charge of their work as related to what is known as forms, riders, terms, privileges and conditions affecting the rates on fire, lightning, hail, wind, windstorm insurance, in charge of all matters pertaining to tornado insurance.

That consisted of working with the various inspection and rating bureaus that subscribed to the publications of that office; consulting and advising them on questions pertaining to those subjects.

At the same time I was sympathizing or working with the schedule department in their analysis of fire hazard and [fol. 2357] fire prevention rates. At the time I went with the Western Actuarial Bureau there were ten employes in the office. There were three of us who had—outside of the clerical help and general work of the office—it was handled by all three without any particular reference to the kind of work, with the exception of the work on forms and tornado, which I handled individually.

At the present time the work of the Western Actuarial Bureau along that line in publishing schedules, analyzing and studying fire hazard and fire prevention work has grown so that there are now approximately 35 employes in the office, and my work has been mostly in supervising

the work of the various departments and in assisting the subscribers to the bureau, both individual subscribers and bureaus, in the various problems which come up in the conduct of their work, including their conference work with state insurance departments.

Q. What is your title in connection with that organization at the present time?

A. Assistant manager.

Q. Who is the manager?

A. J. V. Parker.

Q. Is this publication which is put out, to use language perhaps a little more familiar to some of us, is that, has that to do with what is commonly known as the Dean schedule?

A. It has.

Q. And is this publication or book you get out, is it basically an application of the Dean schedule theory of rating?

A. Yes, sir.

Q. Have you been continuously with the Western Adjustment Inspection Company since the time you went with them to the present time?

A. I have never been with the Western Company——

[fol. 2358] Q. Western Actuarial Bureau, I mean.

A. No. I omitted one period there. From September, 1917, until—from September 17, 1917, until June 1, 1918, I was in the United States Army, in the engineering department of the army.

Q. Were you in France?

A. Eighteen months of that time.

Q. With the exception of the period that you were in the army have you been with the Western Actuarial Bureau since the time you stated you started with them up to the present time?

A. I have.

Q. In connection with the work of the Western Actuarial Bureau as you have been aiding in its conduct have you had to do with the present law suit? That is, the suit of the Aetna Insurance Company and others against Ben C. Hyde?

A. I have.

Q. What have you had to do with this lawsuit?

A. Mr. Terry, manager of the Missouri Inspection Bureau, has discussed the various problems from the time

that the first order was issued, January 5, 1922, up to the present time, and I have assisted him in every way possible in securing data and working out the problems which have arisen.

Q. Has the general supervision of the gathering of the data that has been procured here respecting premiums and expenses and so forth, has it been under your general direction?

A. It has.

Q. And the active work of going from company to company and verifying the figures and their books, have you personally done that or has that been done by somebody [fol. 2359] else, in general?

A. In general it has been done by someone else. I did some of it in conjunction with Mr. Baty.

Q. Mr. Baty, however, has done the bulk of that work, has he not?

A. Yes, I merely went with him for three weeks in the East in August and the early part of September for the purpose of seeing just how the work was being done.

Q. Are those blanks on which the information has been collated, were they prepared pretty largely by you, so far as the printed portion of them is concerned? And designed to bring out the information?

A. Mr. Baty and I prepared them.

Q. Is your relation of your bureau to these various bureaus of a state like the Missouri Inspection Bureau something like a head lodge bears to the head lodge—or some such relation as that?

A. I don't know.

Q. Well, go ahead and tell us a little more definitely how you are related to the Missouri Inspection Bureau, for instance?

A. Our office is primarily a service organization to which the Missouri Inspection Bureau subscribes annually; and the work of our office, or the publications of our office are purely advisory so far as the use of them is concerned by the Missouri Inspection Bureau. Our advices to them are purely advisory. Our office being a central office and handling all states, where similar problems come up from time to time, is used by various bureaus as a means of securing information as to the manner in which the same problems arising in other states are handled, that they may

[fol. 2360] have a broader knowledge of the insurance business from them, merely as it comes up in an individual state.

Q. In other words, it is a means of benefiting by the experience of others with whom they might not otherwise come in contact?

A. That is true.

The Referee: In the nature of an information bureau, Mr. Hobbs?

A. Yes, sir.

Mr. Folonie:

Q. Now, are your activities by way of gathering statistics such as were put in evidence in this case, is that a part of the routine of your office, or is that out of the ordinary routine?

A. It is out of the ordinary. We endeavor to compile such statistics or figures or records as are necessary on the part of any of our subscribers to meet any of the problems which arise in their field.

Q. Well, perhaps, to put it another way: Do you compile such figures as are presented in this case and keep them as a preparation for what might ensue, or do you only get them as circumstances indicate in a particular juncture?

A. Only as circumstances require.

Q. Now, in connection with your business, have you made a study and examination into frequency or infrequency with which catastrophes occur related to different classes and kinds of insurance?

A. I have.

Q. For instance, or perhaps most familiarly known, the conflagration element relating to fire insurance, you have examined into that, have you?

A. That is a problem which is of vital interest to those studying the fire hazard.

[fol. 2361] The Referee: You have examined into it?

A. Yes, sir.

Mr. Folonie:

Q. Have you examined into the catastrophes incident to the forms of insurance other than fire, such for instance as tornado, windstorm and so forth?

A. Yes, sir.

Q. Is there a catastrophe hazard involved in forms of insurance other than fire?

A. There is.

Q. And you may illustrate what it is in any way that seems to you to clarify your views and tell us what is the nature of the catastrophe hazard in other lines.

A. Includes tornado insurance—in the case of tornado insurance, it has been found that there are windstorms which might be called purely local in character, and that a rather unusual wind will tear off the shingles of a shingled building or the cornice, or cause a damage to one piece of property in a neighborhood, or two pieces of property, and then there are windstorms which will sweep through a single town and will damage a large number of buildings to a slight extent, such as shingles and chimneys and purely exterior attachments to the buildings; then there are other storms which will sweep across a whole state or a group of states. There was a storm last spring which covered part of Indiana, Illinois, Missouri, Kentucky, Tennessee, Arkansas and Mississippi.

The Referee: That was one storm and not a group?

A. One storm, yes, sir. And there are what might be called a high wind, a storm where the damage is sweeping in character. The latter storm is what is usually termed a tornado catastrophe.

[fol. 2362] Mr. Folonie:

Q. Was there any tornado in the City of St. Louis in comparatively recent years that was destructive out of the ordinary?

A. There was a tornado which did a very heavy damage to the City of St. Louis. I don't remember the exact year, but it is within the last ten years, as I recall.

Q. Are the elements relating to classes other than fire and particularly tornado more or less variable in their uncertainty?

A. They are. I neglected to cover the subject of hail insurance. Hail losses—and by that I mean hail on growing crops—are usually quite extensive in their nature and will cover entire counties or single counties, at times, and they very often will extend over several states in a single storm.

Q. Is the fact that these catastrophes when they occur may proceed over sections or cover a state, does that make complicated or difficult the determination of the loss in a particular catastrophe as distinguished from the more localized effect of a fire?

A. It does.

Q. Is the extent or portion of extent of the liability of these other lines more easy or more difficult of mathematical calculation than respects fire?

A. It is more difficult because of the extent of the area of disaster and the number of policies involved in the storm. The storm which I mentioned which covered so many states this last spring, one company had 10,000 claims in that single storm. And their records of that storm would be reported to three different departments of the company.

Q. And how many insurance departments of states would those enter into?

A. As many departments as there were states.

[fol. 2363] Q. Have you any estimate as to the extent or proportion or ratio relating to the premium income of classes other than fire which this catastrophe hazard involves?

A. I have. That problem has been one of interest to us in connection with our study of that subject for the last three or four years, and it is the concensus that a 3 per cent allowance——

Mr. Jacobs (interrupting): Wait a minute. The defendant objects, Your Honor, to a statement which presumably is based upon expert testimony to the effect that it is the concensus. I presume he means a concensus of opinion.

Mr. Folonie: I think probably the form——

Q. It is your own views, Mr. Hobbs, I presume?

A. It is my opinion.

The Referee: I wish you would enlighten me on one point. Read that, Mr. Blume.

(Answer read by the reporter.)

The Witness: It is my opinion that because of the extensive character of the catastrophe that an allowance of 3 per cent of the earned premiums on the class is necessary in order to compensate the companies for assuming this liability.

The Referee: And you refer now to storm hazards?
A. Yes, sir.

Mr. Folonie:

Q. Now, when you say 3 per cent, and the court's suggestion, "storm hazard," are you limiting your 3 per cent now to tornado and windstorm or are you comprising in [fol. 2364] your answer the classes other than fire?
A. I am comprising all classes other than fire. I believe in some classes, I believe in tornado it should be more than that, and in hail it should be more than that; but as an average over the classes I believe that 3 per cent is fully justified.

The Referee: That includes not only storm hazards, then, but automobile and marine and all other forms of insurance not including fire losses?
A. The marine liability will include liability from practically any cause, and in your tornado and storm there will be an extensive marine damage and in your tornado there will be a damage to automobiles, due to destruction of the building and the falling in of property on the automobiles.

Mr. Folonie:

Q. They are so interwoven, in other words, that you are not seeking to separate them class by class?
A. The other classes other than tornado and hail as a rule are written covering several hazards and in the storm there will be liability to the insurance company because of one of the hazards insured against in connection with the storm, which might be either tornado or fire.
Q. And if in a tornado the roof of a large garage building falls in and crashes the automobile, then you have collision insurance on automobiles and tornado insurance on buildings, you have an intermixture in fact there that is almost impossible to separate, isn't it?
A. We have.
[fol. 2365] Q. You testified in previous rate hearings about the catastrophe hazard, particularly with reference to tornado and windstorms, didn't you?
A. Yes, sir.
Q. Take tornado and windstorm by themselves, as separated from other classes, about what do you think is the

catastrophe hazard in tornado and windstorm by themselves?

A. 10 per cent.

Q. Now, have you made computation of what difference it makes whether you take 3 per cent on all classes other than fire or if you would increase tornado and windstorm to 10 per cent—what difference it makes in your total figure when you get through?

A. Yes, sir.

Q. What difference does it make?

A. In figuring the experience in Missouri for the years 1916 to 1920, inclusive, it made a difference of 1/10 of 1 per cent. By that I mean that by taking 10 per cent on my hail and tornado, or rather on all other classes other than fire, and taking 3 per cent on fire, the charge was 31/10 per cent on the total of earned premiums.

Q. In other words, the premium from these other classes is so comparatively small that the proportion when related to the entire premium makes only this small fraction of one per cent difference, whichever rate you take, whether 3 or 10?

A. That is true.

The Referee:

Q. Let's see. 3 per cent rate on all insurance as compared with 3 per cent rate on fire insurance and 10 per cent on all other insurance leaves a marginal difference of only 1/10 of 1 per cent between the two calculations?

A. Yes, sir.

[fol. 2366] Q. And that is due to the relatively overwhelming amount of fire losses as compared to other losses?

A. Fire premiums.

Q. Premiums, I should say.

A. Yes, sir.

The Referee: Proceed.

[fol. 2367] Mr. Folonie:

Q. Mr. Hobbs, have you, in the course of prosecution of your duties in the position you hold with the bureau made examination and investigation into the investment expenses of the companies doing business in the State of Missouri

and the relation that such investment expense bears to earned premiums?

A. Yes, sir.

Q. What percentage, as an outside figure, in your judgment, does the investment expense bear to earned premiums?

Mr. Jacobs: Wait a minute, Your Honor. The defendant objects to that question as to calling for an improper conclusion on the part of this witness. The question of the [fol. 2368] proportion of investment expenses to premiums is ascertainable and it doesn't call for a mere conclusion on the part of this witness.

Mr. Folonie: I will examine and see whether it is ascertainable.

Q. Mr. Hobbs, from your experience is the amount of the time which is devoted by officials of insurance companies to the investment activities of their companies as they conduct their business in fact a matter which is ascertainable or determinable with mathematical certainty?

A. No, sir.

Q. Why not?

A. Because in the usual routine of insurance company management the officials who handle these matters handle a large number of other matters, and they spend no regular time either each day or each month for that purpose, but take care of such matters as they come up from time to time. It takes such a relatively small amount of their time as to make it impossible to determine the exact amount of their time or their expense of the clerical help in handling it, because they do not have separate people or separate departments to handle that work.

Q. What is your best judgment and estimate of the proportion or ratio which such investment activities or expenses of companies in general bear to the earned premiums?

A. ½ of 1 per cent.

Q. Have you made a comparative study of—so to say about what percentage the ⅛ of 1 per cent of mean invested assets which is used in the annual statement blanks what

[fol. 2369] proportion that bears in general to the earned premiums?

A. It ranges from .2 of 1 per cent to .5 of 1 per cent. The cases of where it would range .5 of 1 per cent are where there are other activities of the company which affect that item, such as the management of buildings.

Q. Have you made a comparative study of the underwriting experience by classes blanks which were returned by the companies to the State of Missouri for the years 1917 to 1921 inclusive?

A. I have.

Q. Is that a 1917 blank which I show you there (indicating document)?

A. It is.

Mr. Folonie: We offer it in evidence.

(Whereupon the document so referred to, having been by the reporter marked Plaintiff's Exhibit 1348, being so offered and introduced, was admitted in evidence, and is in words and figures as follows, to-wit:)

[fol. 2370] Underwriting Experience by Classes for Missouri for Year Ending December 31, 1917

Classification		Protected		Unprotected	
		Net premiums	Net losses paid	Net premiums	Net losses paid
Mercantile Buildings:					
1. Fire Proof	7	29.82	.....	.....	.....
2. Brick and Stone	8	1,540.76	779.34	.....	.....
3. Frame, Ironclad, Stucco and Hollow-Cement Block	9	282.61	.....	87.82	.....
4. Sprinklered	10	998.65	666.89	.....	.....
Mercantile Contents:					
5. Fire Proof	11	405.93	50.50	.....	.....
6. Brick and Stone	12	5,006.29	1,654.67	75.25	.....
7. Frame, Ironclad, Stucco and Hollow-Cement Block	13	1,014.40	35.00	258.83	.....
8. Sprinklered	14	.....	.....	.....	.....
Dwelling Buildings:					
9. Brick and Stone	1	878.57	17.68	67.20	.....
10. Frame, Ironclad, Stucco and Hollow-Cement Block	2	3,647.23	5,044.85	533.03	1,621.66
Dwelling Contents:					
11. Brick and Stone	4	435.03	6.50	.....	.....
12. Frame, Ironclad, Stucco and Hollow-Cement Block	5	1,535.68	811.48	130.09	487.29

Underwriting Experience—Continued

Classification		Protected		Unprotected	
		Net premiums	Net losses paid	Net premiums	Net losses paid
Special Hazards:					
13. Metal Workers	65	859.12	6.91	82.50	.....
14. Wood Workers	53	666.75	295.02	.....	.....
15. Mining Properties	40	.....	.....	2,556.76	13.82
16. Grain Elevator Buildings	66	.....	.....	.....	.....
17. Grain Elevator Contents	67	84.68	.....	.....	.....
18. Packing Houses	68	1,256.66	1.80	.....	.....
19. Flour and Grist Mills	31	55.07	.....	.....	.....
20. Miscellaneous Factories	54	3,201.19	1,665.20	271.36	.....
21. Farm Property	36	.....	.....	634.07	976.25
22. Steam Railroads	69	44.56	.....	.....	.....
23. Street Railways	70	500.16	4.26	.....	.....
Public Buildings:					
24. Churches	24	300.62	.....	.....	600.00
25. Schools	25	805.76	.....	11.50	.....
26. Hospitals	26	25.78	.....	.....	.....
27. Court Houses	27	3.44	.....	.....	.....
28. Reform Schools	28	14.44	.....	187.95	.....
29. Asylums	29	.....	.....	.....	.....
30. Other Public Properties	30	286.12	.....	60.90	.....

31. Motor Vehicles	72	.....	.....	.....	.....
32. Sprinkler Leakage	59	67.06	.....	.....	.....
33. Hail	60	.....	.....	63.00	.....
34. Registered Mail and Package and Transportation	71	.....	.....	.....	.....
35. Windstorm and Tornado	61	.....	.....	2,281.33	93.20
36. Aggregate of all other classes not shown above	62	1,946.44	430.59	201.69	10.52
Total		25,892.82	11,470.69	7,501.28	3,802.74

Other Earnings:

(x) Interest earned on unearned premiums on Missouri Business ..... $.....
(xx) Interest earned on capital stock and surplus, pro rata for Missouri ....
Give method of computing these items.
Give method of computing these items.

Expenses:

1. Commission paid agents:

(a) Amount at 15%	$.....	
(b) Amount at 20%	.....	
(c) Amount at 25%	.....	
(d) Amount over 25% (x)	.....	
Total commissions	.....	.....

Underwriting Experience—Continued

2. Salaries and expenses paid Missouri agents and adjusters		$.....
3. Taxes, licenses and fees paid in Missouri		.....
4. Rating bureau, inspection, surveys, protective departments and fire prevention bureau expenses		.....
5. Proportion of home and departmental expenses (not included in any of above):		
(a) Underwriting expenses	.....	
(b) Investment expenses	.....	
	.....	
6. Other expenses(xx)		.....
Total expenses		.....

STATE OF ——,
County of ——, ss:

——, ——, being duly sworn, on oath say that they are President and Secretary, respectively, of the —— Insurance Company; and that the foregoing is a full, true and correct statement and report.

Subscribed and sworn to before me this — day of ——, 191-. —— ——, Notary Public.

Instructions

This report must be made on net premiums and net losses paid. By net premiums and losses is meant premiums and losses less return premiums and reinsurance in companies authorized to do business in Missouri and no other deductions should be made. No items of "Marine and Inland" business should be included in this report, except the item of "Motor Vehicles" on line 31 of this report.

[fol. 2371] Mr. Folonie: I will state to the court that the amounts filled in in the blank in writing are not designed to be considered by the court. It is the printed portion of the blank. They have amounts written in, but it is the printed portion to which we are now directing attention and for which purpose alone we are producing the blank at this time.

The Referee: They are offered simply for the purpose of showing the blank form?

Mr. Folonie: That is correct.

The Referee: The written matter will be disregarded, then.

Mr. Folonie:

Q. Mr. Hobbs, is the one I now show you the 1918 form?

A. It is.

Q. And I note that the word "gross" on the back of that is scratched out and the word "net" written in in pen, and then the word "incurred" after the word "losses" scratched out, and the word "paid" interlined. Was that a correction made by the department after it went out to the companies?

A. It was.

Q. And then they were directed to consider it in such altered form, were they?

A. Yes, sir.

Mr. Folonie: We offer that in evidence.

(Whereupon the document so referred to, having been by the reporter marked Plaintiffs' Exhibit 1349, being so offered and introduced, was admitted in evidence, and is in words and figures as follows, to-wit:)

[fol. 2372] Underwriting Experience by Classes for Missouri for Year Ending December 31, 1918

Instructions

1. Report net business written, net premiums received, and gross losses paid, less cancellations, on each item in each class, without deducting reinsurance ceded or adding reinsurance assumed, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, such assumed reinsurance should be reported.

2. Risks should be classified as fireproof, brick, frame, sprinklered, etc., according to the manner in which they have been rated by the rate-making bureau.

3. A risk should be classed as mercantile when the greatest hazard is the storage or sale of merchandise or small manufacturing, with or without power, with five hands or less.

4. Risks forming a part of a manufacturing plant are to be classed the same as the main risk, unless unexposed thereby, in which case they are to take their own appropriate classification whether insured under blanket item or specifically.

5. When blanket form is used, companies are requested to make the closest possible approximation of the amounts applying to the various sections carrying different classifications or of different construction, or sprinklered and unsprinklered. When not possible to make a reasonably accurate separation, include all in contents item.

6. Submit all data on the blanks furnished, typewritten, if possible. Omit cents, use nearest dollar. If 50 c., drop it.

7. The numbers in parenthesis following the title of each class are classification numbers used by the National Board of Fire Underwriters in their Standard Classification of Occupancy Hazards as revised October 25, 1917, and are for the convenience of fire insurance companies using these numbers.

8. Buildings having wire lath and plaster walls on steel supports should class as brick construction.

[fol. 2373] Underwriting Experience by Classes

State No.	Class	Protected			Unprotected		
		Business written	Premiums	Losses	Business written	Premiums	Losses
1	Dwellings and their outbuildings, private boarding houses, fraternity and sorority houses, flats, tenements and apartments, nurses' and sisters' homes (not to include school dormitories). (2, 10, 22).....	....	....	....	....	...	....

	Building and contents:							
2	Brick, fireproof, stone and hollow tile	3:	161,700	1,157	255	1,000	22	....
4	Frame (plain, stucco, brick veneered); hollow concrete block	6:	438,040	4,347	4,954	4,050	110	429
	Mercantile buildings (101, 103, 168, 200, 606, 620, 622, 636, 680):							
5	Fireproof	7:	17,800	212	....	....	...	....
7	Brick; walls of stone, concrete	8:	127,670	2,274	254	2,625	99	....
9	Frame (plain, stucco, metal clad or brick veneered hollow block or tile)	9:	20,500	358	1,904	5,050	75	....
	Mercantile contents (102, 110, 112, 114, 116, 124, 126, 128, 130, 132, 136, 138, 140, 142, 146, 154, 156, 160, 164, 176, 180, 184, 186, 196, 254, 260, 266, 268, 280):							
10	Fireproof	11:	30,650	203	7	....	...	....
12	Brick; walls of stone, concrete	12:	355,985	5,496	2,682	3,500	70	....
14	Frame (plain stucco, metal clad or brick veneered hollow block or tile)	13:	22,400	399	....	10,950	205	4,537
	Public buildings and contents:							
15	Asylums, reformatories, 604:							
15a	Fireproof		....	....	....	....	...	....
15b	Brick; walls of stone, concrete		5,500	73	....	....	...	....
15c	Frame (plain, stucco, metal clad or brick veneered hollow block or tile)	18:	....	....	....	....	...	....
	Churches and chapels. (4.)							
16	Fireproof		....	....	....	....	...	....
18	Brick; walls of stone, concrete	19:	2,500	48	....	....	...	....
20	Frame (plain, stucco, metal clad or brick veneered hollow block or tile)	20:	700	6	....	....	...	....
	Other public buildings. (6, 8, 24.)							
22	Fireproof	21:	12,500	118	....	....	...	....
24	Brick; walls of stone, concrete	22:	66,500	1,382	....	2,500	38	....
26	Frame (plain, stucco, metal clad or brick veneered hollow block or tile)	23:	3,250	43	....	....	...	....

Underwriting Experience—Continued

[fol. 2374] Special Risks—Buildings and Contents

State No.	Class		Protected and unprotected Premiums written	Premiums	Losses
28	Cereal, Grist, feed, rice and flour mills. (370, 420)	31:	9,500	235	2,253
30	Cotton, no compressing. (256)	32:	....	....	....
32	Cotton compresses and warehouses and platforms communicating therewith. (626)	33:	2,750	29	....
34	Cotton yards and platforms not communicating. (628)	34:	....	....	....
36	Cotton gins. (402)	35:	....	....	....
38	Farm risks (including live stock written as farm property.) (16)	36:	....	....	....
40	Grain elevators and warehouses, fireproof construction. (430)	37:	1,500	3	....
42	Grain elevators and warehouses, other constructions. (430, 432)	38:	3,502	60	....
44	Lumber yards, all classes. (650, 652)	39:	11,000	120	....
46	Mining properties. (458)	40:	11,000	893	6,033
48	Mining properties. (388, 390)	41:	....	....	....
50	Oil risks (mineral or earth). (470, 472)	42:	3,450	169	....
52	Oil risks (vegetable and fish). (464, 466, 468)	47:	....	....	....
54	Railway risks (steam and electric). (670)	48:	40,000	360	737
56	Seasonal cottages and their outbuildings. (14)	49:	8,000	14	....
58	Tobacco warehouses, saleshouses, stemmeries, prizeries and rehandling houses. (276, 516)	50:	....	....	....
60	Tobacco barns (country). (682)	51:	....	....	....
62	Wharf risks. (197)	52:	....	....	....
64	Woodworkers. (300, 302, 304, 306, 308, 316, 318, 320)	53:	30,700	357	....
66	Miscellaneous manufacturing risks.				
	(a) 322, 324, 326, 338, 346, 350, 352, 356, 358, 366, 368, 372, 374, 386, 394, 396, 404, 412, 418, 424, 426, 438, 442, 446, 450, 460, 476, 484, 486, 490, 492, 494, 498, 502, 504, 514, 522, 526, 528, 654	55:	175,137	3,118	393
	(b) 354, 406, 452, 474	56:	39,000	699	....
	(c) 480, 506, 508, 510	57:	....	....	....
68	Sprinklered risks	58:	510,825	1,947	18
70	Sprinklered leakage	59:	....	....	....
72	Hail	60:	....	....	....
74	Tornado	61:	425,304	1,839	392

76 Miscellaneous risks not properly assignable to any of the above classes. (278, 416, 617, 624, 630, 642, 648, 654, 656, 672, 674, 702, 703, 704, 705, 706)	62:	45,199	803	285
78 Use and occupancy	63:	37,000	189	....
80 Rent, leasehold, commission and profits	64:	....	....	....
		2,635,637	27,512	25,133

[fol. 2375] Special Risks—Buildings and Contents—Continued

Other earnings:

(x) Interest earned on unearned premiums on Missouri business ..... $.....
(xx) Interest earned on capital stock and surplus, pro rata for Missouri ....
(Give method of computing these items.)

Expenses:

1. Commission paid agents:
   (a) Amount at 15% ..... $.....
   (b) Amount at 20% ....
   (c) Amount at 25% ....
   (d) Amount over 25% ....

   Total commissions ..... $.....

2. Salaries and expenses paid Missouri agents and adjusters ....
3. Taxes, licenses and fees paid in Missouri ....
4. Rating bureau, inspection, surveys, protective departments and fire prevention bureau expenses ....
5. Proportion of home and departmental expenses (not included in any of above):
   (a) Underwriting expenses ..... $.....
   (b) Investment expenses ....

6. Other expenses (xx) ....

   Total expenses ..... $.....

Underwriting Experience—Continued

Oath

STATE OF ——,
County of ——.

—— ——, duly sworn, on oath say that they are President and Secretary, respectively, of the Merchanics & Traders Insurance Company; and that the foreging is a full, true and correct statement and report.

—— ——.

Subscribed and sworn to before me this — day of ——, 19—. —— ——, Notary Public.

[fol. 2376] Mr. Folonie:

Q. Is this the 1919 blank for the—that I have here now?
A. Yes, sir.

Mr. Folonie: We offer that in evidence.

(Whereupon the document so referred to, having been by the reporter marked Plaintiff's Exhibit 1350, being so offered and introduced, was admitted in evidence, and is in words and figures as follows, to-wit:)

[fol. 2377] Name of Company: —— ——. City: New Orleans; State: Louisiana.

Underwriting Experience by Classes for Missouri for Year Ending Dec. 31, 1919

Instructions

1. Report Gross direct business written, less only cancellations; Gross direct premiums received, less only returned premiums; Gross direct losses paid, less only salvage, on each class as indicated; Reinsurance either ceded or assumed should be disregarded entirely, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed reinsurance should be reported.

2. Risks should be classified with reference to construction according to the National Board of Fire Underwriters Standard Classification of Occupancy Hazards as revised October 25, 1917.

3. A risk should be classed as Mercantile when the greatest hazard is the storage or sale of merchandise or small manufacturing with or without power, with five hands or less.

4. Risks forming a part of a manufacturing plant are to be classed the same as the main risk, unless unexposed thereby, in which case they are to take their own appropriate classification, whether insured under blanket item or specifically.

5. When blanket form is used, companies are requested to make the closest possible approximation of the amounts applying to the various sections of separate classifications or of different construction, or sprinklered and unsprinklered. When not possible to make a reasonably accurate separation, include all in contents item.

6. The numbers in parenthesis following the title of each class are classification numbers used by the National Board of Fire Underwriters in their Standard Classification of Occupancy Hazards as revised October 25, 1917, and are for the convenience of fire insurance companies using these numbers.

Entered by B. P.

Date: July 2, '20.

NOTE.—National Board of Underwriters Standard Classification of Occupancy Hazards may be obtained either direct from them or upon application to this Department.

Give complete information called for under each item of this blank, including Other Earnings and Expenses, to avoid the necessity of our returning the blank for correction.

[fol. 2378]

Expenses

Paid in Missouri:

1.	(5) Loss adjustment expenses (including legal expenses on losses)	$202.28
2.	(6) Field supervision expenses	1,291.43
3.	(15) State taxes, licenses and fees	1,353.39
4.	(14) Federal gross premium tax	385.26
5.	Inspection and Rating Bureau expenses	647.82
6.	(6-7) Commissions and agents' allowances (including loss on unpaid balances)	7,987.72
	Total	11,867.90

Underwriting Experience—Continued

Pro-rate for Missouri:

7. (9) Home office salaries and expenses		658.87
8. (10) Rents		63.55
9. (11) Furniture and fixtures		3.20
10. (12) Maps, including corrections		11.23
11. (13) Inspections and surveys, including Underwriters Boards and Associations. (Do not include amount entered under Item 5 above)		166.19
12. (16) Postage, telegraph, telephone and exchange		67.20
13. (17) Legal expenses (excluding legal expenses on losses)		2.32
14. (18) Advertising and printing		131.73
15. (14) Federal Income Tax	$186.52	
16. (14) Federal Excess Profits Tax	80.76	
Total	$267.28	267.28
17. (20) Miscellaneous, itemized:		
United War Works Campaign		9.30
Notary Fees		.27
Total		$13,249.04

NOTE.—Numbers in parenthesis refer to similar items on disbursement page of annual statement blank.

Oath

STATE OF ——,
County of——.

—— ——, duly sworn, on oath say that they are President and Secretary, respectively, of the —— Insurance Company; and that the foregoing is a full, true and correct statement and report.

—— ——.

Subscribed and sworn to before me this — day of ——, 19—. —— ——, Notary Public.

[fol. 2379]

State No.	Class		Protected			Unprotected		
			Business written	Premiums	Losses	Business written	Premiums	Losses
1	Dwellings and their outbuildings, private boarding houses, fraternity and sorority houses, flats, tenements and apartments, nurses' and sisters' homes (not to include school dormitories). Building and contents. (2, 10, 22.)							
2	Brick, fireproof	3	244,858	1,932	94	3,750	64	.....
4	Frame	6	581,490	5,712	4,230	20,050	298	1,200
	Mercantile buildings. (101, 103, 108, 200, 606, 620, 622, 626, 680.)							
5	Fireproof	7	37,050	149	6	.....	.....	.....
7	Brick	8	147,991	2,865	3,488	5,125	221	.....
9	Frame	9	41,500	763	200	5,700	195	22
	Mercantile contents. (102, 110, 112, 114, 116, 124, 126, 128, 130, 132, 136, 138, 140, 142, 146, 154, 156, 160, 164, 176, 180, 184, 186, 196, 254, 260, 266, 268, 280.)							
10	Fireproof	11	96,700	782	.....	.....	.....	.....
12	Brick	12	404,950	6,177	10,065	33,850	500	.....
14	Frame	13	7,200	111	30	1,000	31	.....
	Public buildings and contents, churches, and chapels. (4.)							
16	Fireproof	18	25,000	106	.....	.....	.....	.....
18	Brick	19	20,953	384	.....	.....	.....	.....
20	Frame	20	4,000	78	.....	800	3	.....
	Other public buildings. (6, 8, 24, 604.)							
22	Fireproof	21	.....	.....	.....	.....	.....	.....
24	Brick	22	33,816	849	.....	.....	.....	.....
26	Frame	23	5,000	81	.....	.....	.....	.....
	Total		1,650,508	19,989	18,113	68,075	1,315	1,222

Underwriting Experience—Continued

Special Risks—Buildings and Contents

State No.	Class		Protected and unprotected: Business written	Premiums	Losses
28	Cereal, grist, feed, rice and flour mills. (370, 420)	31	5,000	95	.....
30	Cotton, no compressing. (256)	32	.....	.....	.....
32	Cotton compresses and warehouses and platforms communicating therewith. (—.)	33	.....	.....	.....
43	Cotton yards and platforms not communicating. (268.)	34	.....	.....	.....
36	Cotton gins. (402.)	35	.....	.....	.....
38	Farm risks (including livestock written as farm property) (16, 703, 704)	36 (a)	500	10	.....
40	Grain elevators and warehouses, fireproof construction. (430.)	37	.....	.....	.....
42	Grain elevators and warehouses, other constructions. (430, 432)	38	101,693	1,056	.....
44	Lumber yards, all classes. (650, 652)	39	5,500	87	.....
44a	Metal workers (322, 324, 326, 328)	54 (a)	14,750	202	9
46	Mining properties other than coal (458)	40	500	332	609
48	Mining properties, coal. (388, 390)	41	3,000	69	.....
50	Oil risks (mineral or earth). (470, 472.)	42	3,400	118	.....
52	Oil risks (vegetable and fish.) (464, 466, 468.)	47	2,500	68	.....
54	Railway risks (steam and electric). (670)	48	40,000	297	.....
56	Seasonal cottages and their outbuildings, (14.)	49	.....	1	.....
58	Tobacco warehouses, saleshouses, stemmeries, prizeries and rehandling houses. (276, 516.)	50	5,000	55	.....
60	Tobacco barns (country.) (682)	51	.....	.....	.....
62	Wharf risks. (197.)	52	.....	.....	.....
64	Woodworkers. (300, 302, 304, 306, 308, 316, 318, 320.)	53	19,200	367	.....
66	Miscellaneous manufacturing risks. (346, 350, 352, 356, 358, 366, 368, 372, 374, 386, 394, 396, 404, 412, 418, 424, 426, 438, 442, 450, 460, 476, 484, 486, 490, 492, 494, 498, 502, 504, 514, 522, 526, 528, 654, 354, 406, 452, 474, 480, 506, 508, 510..	54	186,425	3,443	368
68	Sprinklered risks	58	534,350	1,560	16
70	Sprinklered leakage	59	.....	.....	.....
72	Hail	60	.....	.....	.....
74	Tornado	61	313,525	1,635	93
76	Miscellaneous risks not properly assignable to any of the above classes. (278, 416, 446, 617, 624, 630, 642, 648, 656, 672, 674, 702, 706.)	62	124,557	1,462	2

78	Use and occupancy	63	25,000	57	132
80	Rent, leasehold, commission and profits	64			
82	Automobiles (floaters) (705)	72	.....	.....	.....
84	Explosion	73	.....	.....	.....
86	War risk, riot and civil commotion	74	.....	.....	.....
88	Registered mail and parcel post	71	.....	.....	.....
	Total		1,383,900	10,894	1,229

	Business written	Premiums	Losses
Total—2 to 26—Protected	1,650,508	19,989	18,113
Total 2 to 26—Unprotected	68,675	1,315	1,222
Total—28to 88—Protected and unprotected	1,383,900	10,894	1,229
Grand total, all classes	3,103,083	32,198	20,564

Other Earnings

(x) Interest earned on unearned premiums on Missouri Business	$277.63
(xx) Interest earned on capital stock and surplus, pro rata for Missouri	1,420.42

Give method of computing these items.

[fol. 2380] Mr. Folonie:

Q. Is this the 1920 blank I now show you (indicating)?
A. Yes, sir.

Mr. Folonie: We offer that in evidence.

(Whereupon the document so referred to, having been by the reporter marked Plaintiff's Exhibit 1351, being so offered and introduced, was admitted in evidence, and is in words and figures as follows, to-wit:)

Underwriting Experience—Continued

[fol. 2381] Copy

Name of Company: Mechanics & Traders Ins. Co. of New Orleans, La.
City: ——; State ——.

Underwriting Experience by Classes for Missouri for Year Ending Dec. 31, 1920

Instructions

1. Report Gross direct business written, less only cancellations; Gross direct premiums received, less only returned premiums; Gross direct losses paid, less only salvage, on each class as indicated; Reinsurance either ceded or assumed should be disregarded entirely, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed reinsurance should be reported.
2. Risks should be classified with reference to construction according to the National Board of Fire Undedwriters Standard Classification of Occupancy Hazards as revised October 25, 1917.
3. A risk should be classed as Mercantile when the greatest hazard is the storage or sale of merchandise or small manufacturing with or without power, with five hands or less.
4. Risks forming a part of a manufacturing plant are to be classed the same as the main risk, unless unexposed thereby, in which case they are to take their own appropriate classification, whether insured under blanket item, or specifically.
5. When blanket form is used, companies are requested to make the closest possible approximation of the amounts applying to the various sections of separate classifications or of different construction, or sprinklered and unsprinklered. When not possible to make a reasonably accurate separation, include all in contents item.
6. The numbers in parenthesis following the title of each class are classification numbers used by the National Board of Fire Undewriters in their Standard Classification of Occupancy Hazards as revised October 25, 1917, and are for the convenience of fire insurance companies using these numbers.

Entered by Parker.
Date Aug. 18, 1921.

NOTE.—National Board of Underwriters Standard Classification of Occupancy Hazards may be obtained either direct from them or upon application to this Department.

Give complete information called for under each item of this blank, including Other Earnings and Expenses, to avoid the necessity of our returning the blank for correction.

Expenses

Paid to Missouri:

1. Loss adjustment expenses (including legal expenses on losses)		$637.28
2. Field supervision expenses		1,417.88
3. State taxes, licenses and fees		1,467.65
4. Federal gross premium taxes		449.16
5. Inspection and rating bureau expenses		969.73
6. Commissions and agents' allowances (including losses on unpaid balances)		9,295.50

	Total for all States	Ratio of Mo. business to total business
7. Home office salaries and expenses	$41,070.57	$850.14
8. Rents	4,642.76	96.09
9. Furniture and fixtures	400.41	8.28
10. Maps, including corrections	668.16	13.83
11. Inspections and surveys, including Underwriters Boards and Associations. (Do not include amount entered under item 5)	33,718.89	697.96
12. Postage, telegraph, telephone and exchange	3,154.11	65.28
13. Legal expenses (excluding legal expenses on losses)	.....	.....
14. Advertising and printing	9,490.65	196.44
15. Federal income tax	15,114.46	312.85
16. Federal excess profits tax	16,354.10	338.53
17. Miscellaneous, itemized: Capital Stock Tax	1,261.00	26.10
Total		$66,842.70

NOTE.--The ratio referred to above should be the same for all items 7 to 17 inclusive.

Underwriting Experience—Continued

Oath

STATE OF ——,
County of ——.

—— ——, —— ——, duly sworn, on oath say that they are President and Secretary, respectively, of the —— Insurance Company; and that the foregoing is a full, true and correct statement and report.

—— ——.
—— ——.

Subscribed and sworn to before me this — day of ——, 19—. —— ——, Notary Public.

[fol. 2383] Underwriting Experience

State No.	Class		Protected			Unprotected		
			Business written	Premiums	Losses	Business written	Premiums	Losses
1	Dwellings and their outbuildings, private boarding houses, fraternity and sorority houses, flats, tenements and apartments, nurses' and sisters' homes (not to include school dormitories). Building and contents. (2, 10, 22).							
2	Brick, fireproof	3	545,000	4,024	1,285	5,250	89	.....
4	Frame	6	747,250	7,952	6,687	40,600	685	261
	Mercantile buildings. (101, 103, 168, 200, 606, 620, 622, 636, 680.)							
5	Fireproof	7	39,300	239	84	.....	.....	.....
7	Brick	8	186,175	4,058	497	3,000	82	.....
9	Frame	9	51,832	1,010	20	9,917	278	.....
	Mercantile contents. (102, 110, 112, 114, 116, 124, 126, 128, 130, 132, 136, 138, 140, 142, 146, 154, 156, 160, 164, 176, 180, 184, 186, 196, 254, 260, 266, 268, 280.)							
10	Fireproof	11	49,050	439	3,362	.....	.....	.....
12	Brick	12	377,840	5,971	1,233	11,000	230	509
14	Frame	12	38,718	755	.....	1,500	31	.....

	Public buildings and contents churches and chapels (4).							
16	Fireproof	18	37,500	427	.....	.....	.....	.....
18	Brick	19	40,000	585	.....	.....	.....	.....
20	Frame	20	4,000	80	.....	.....	.....	.....
	Other public buildings. (6, 8, 24, 604.)							
22	Fireproof	21	1,000	17	.....	.....	.....	.....
24	Brick	22	18,400	458	30	5,000	135	.....
26	Frame	23	4,000	77	.....	2,000	96	.....
	Total		2,140,065	26,092	13,198	78,267	1,617	770

Special Risks—Buildings and Contents

State No.	Class		Protected and unprotected: Business written	Premiums	Losses
28	Cereal, grist, feed, rice and flour mills. (370, 420.)	31	4,500	101	210
30	Cotton, no compressing. (256.)	32	.....	.....	.....
32	Cotton compresses and warehouses and platforms communicating therewith. (626.)	33	.....	.....	.....
34	Cotton yards and platforms not communicating. (628.)	34	.....	.....	.....
36	Cotton gins. (402.)	35	.....	.....	.....
38	Farm risks (including live stock written as farm property) (16, 703, 704)	36 (a)	24,000	1,584	.....
40	Grain elevators and warehouses, fireproof construction. (430.)	37	.....	.....	.....
42	Grain elevators and warehouses, other constructions. (430, 432.)	38	4,435	164	1,152
44	Lumber yards, all classes. (650, 652.)	39	9,500	63	.....
44a	Metal workers. (322, 324, 326, 338.)	54 (a)	52,550	924	.....
46	Mining properties other than coal. (458)	40	20,000	424	4
48	Mining properties, coal. (388, 390.)	41	3,000	69	.....
50	Oil risks (mineral or earth). (470, 472.)	42	1,000	36	.....
52	Oil risks (vegetable and fish.) (464, 466, 468.)	47	2,000	27	.....
54	Railway risks (steam and electric). (670.)	48	40,000	292	.....
56	Seasonal cottages and their outbuildings. (14.)	49	1,500	35	.....
58	Tobacco warehouses, saleshouses, stemmeries, prizeries and rehandling houses. (276, 516.)	50	7,000	72	.....
60	Tobacco barns (country). (682.)	51	.....	.....	.....
62	Wharf risks. (197.)	52	.....	.....	.....

Underwriting Experience—Continued

Special Risks—Buildings and Contents

State No.	Class		Protected and unprotected: Business written	Premiums	Losses
64	Woodworkers. (300, 302, 304, 306, 308, 316, 318, 320.)	53	29,700	452	3
66	Miscellaneous manufacturing risks: 346, 350, 352, 354, 356, 358, 366, 368, 372, 374, 386, 394, 396, 404, 406, 412, 418, 424, 426, 438, 442, 450, 452, 460, 474, 476, 480, 484, 486, 490, 492, 494, 498, 502, 504, 506, 508, 510, 514, 522, 526, 528, 654.	54	226,500	3,727	213
68	Sprinklered risks	58	691,950	2,270	626
70	Sprinklered leakage	59	.....	.....	.....
72	Hail	60	.....	.....	.....
74	Tornado	61	516,375	2,738	1,081
76	Miscellaneous risks not properly assignable to any of the above classes. (278, 416, 446, 617, 624, 630, 642, 648, 656, 672, 674, 702, 706.)	62 (b)	103,608	1,412	596
78	Use and occupancy	63	53,500	272	20
80	Rent, leasehold, commission and profits	64	.....	.....	.....
82	Automobiles (all business)	72	.....	.....	.....
84	Explosion	73	.....	.....	.....
86	War risk, riot and civi commotion	74	.....	.....	.....
88	Registered mail and parcel post	71	.....	.....	.....
	Total		1,782,248	14,662	3,905

	Business written	Premiums	Losses
Total—2 to 26—Protected	2,140,065	26,092	13,198
Total—2 to 26—Unprotected	78,267	1,617	770
Total—28 to 88—Protected and unprotected	1,782,248	14,662	3,905
Grand total, all classes	4,000,580	42,371	17,873

Other earnings

(x) Interest earned on unearnel premiums on Missouri Business $426.90
(xx) Interest earned on capital stock and surplus, pro rata for Missouri..... $2,057.79
Give method of computing these items.

[fol. 2384] Mr. Folonie:

Q. Is this the 1921 blank?
A. It is.

Mr. Folonie: We offer it in evidence.

(Whereupon the document so referred to, having been by the reporter marked Plaintiffs' Exhibit 1352, being so offered and introduced, was admitted in evidence, and is in words and figures as follows, to-wit:)

Underwriting Experience—Continued

[fol. 2385] Name of Company, Mechanics & Traders Ins. Co. of New Orleans, La.

City ..... State .....

Underwriting Experience by Classes

for

Missouri

For Year Ending December 31, 1921

Instructions

1. Report Gross direct business written, less only cancellations; Gross direct premiums received, less only returned premiums; Gross direct losses paid, less only salvage, on each class as indicated; Reinsurance either ceded or assumed should be disregarded entirely, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed reinsurance should be reported.

2. Risks should be classified with reference to construction according to the National Board of Fire Underwriters Standard Classification of Occupancy Hazards as revised October 25, 1917.

3. A risk should be classed as Mercantile when the greatest hazard is the storage or sale of merchandise or small manufacturing, with or without power, with five hands or less.

4. Risks forming a part of a manufacturing plant are to be classed the same as the main risk, unless unexposed thereby, in which case they are to take their own appropriate classification, whether insured under blanket item or specifically.

5. When blanket form is used, companies are requested to make the closest possible approximation of the amounts applying to the various sections of separate classifications or of different construction, or sprinklered or unsprinklered. When not possible to make a reasonably accurate separation, include all in contents item.

6. The numbers in parenthesis following the title of each class are classification numbers used by the National Board of Fire Underwriters in their Standard Classification of Occupancy Hazards as revised October 25, 1917, and are for the convenience of fire insurance companies using these numbers.

NOTE.—National Board of Underwriters Standard Classification of Occupancy Hazards may be obtained either direct from them or upon application to this Department.

Give complete information called for under each item of this blank, including other earnings and expenses, to avoid the necessity of our returning the blank for correction.

[fol. 2386]

Expenses

Missouri:

1. Loss adjustment expenses (including legal expenses on losses)	$267.40
2. Field supervision expenses	454.80
3. State taxes, licenses and fees	1,533.91
4. Federal gross premium taxes	278.16
5. Inspection and Rating Bureau expenses	1,220.00
6. Commissions and agents' allowances (including losses on unpaid balances)	5,294.73

	Total for all states	Ratio of Mo. business to total business
7. Home office salaries and expenses	$49,642.84	$1,193.31
8. Rents	7,794.68	187.37
9. Furniture and fixtures	141.86	3.41
10. Maps, including corrections	720.75	17.33
11. Inspections and surveys, including Underwriters' Boards and Associations. (Do not include amount entered under Item 5)	38,165.58	108.38
12. Postage, telegraph, telephone and exchange	2,976.72	154.04
13. Legal expenses (excluding legal expenses on losses)	1,617.55	38.88
14. Advertising and printing	10,460.40	246.95
15. Federal Income Tax	7,030.01	168.99
16. Federal Excess Profits Tax	.....	.....
17. Miscellaneous, itemized	11.83	.28
Total		$11,167.94

NOTE.—The ratio referred to above should be the same for all items 7 to 17 inclusive.

Underwriting Experience—Continued

Oath

STATE OF ——,
County of ——.

——, ——, duly sworn, on oath say that they are President and Secretary, respectively, of the —— Insurance Company; and that the foregoing is a full, true and correct statement and report.

—— ——.
—— ——.

Subscribed and sworn to before me this — day of ——, 19—.

—— ——,
Notary Public.

[fol. 2387] Underwriting Experience by Classes

State No.	Class		Protected			Unprotected		
			Business written	Premiums	Losses	Business written	Premiums	Losses
1	Dwellings and their outbuildings, private boarding houses, fraternity and sorority houses, flats, tenements and apartments, nurses' and sisters' homes (not to include school dormitories), buildings and contents. (2, 10, 22)							
2	Brick, fireproof	3	480,471	3,561	2,693	4,500	50	....
4	Frame	6	743,054	7,896	5,247	37,075	533	....
	Mercantile buildings. (101, 103, 168, 200, 606, 620, 622, 636, 680)							
5	Fireproof	7	109,900	1,160	....	....	....	....
7	Brick	8	168,475	3,418	466	1,250	41	....
9	Frame	9	44,300	813	2,167	12,800	351	325
	Mercantile contents. (102, 110, 112, 114, 116, 124, 126, 128, 130, 132, 136, 138, 140, 142, 146, 154, 156, 160, 164, 176, 180, 184, 186, 196, 254, 260, 266, 268, 280)							
10	Fireproof	11	25,900	266	....	....	....	....
12	Brick	12	373,375	5,362	1,538	4,500	75	....
14	Frame	13	18,150	301	....	2,500	78	....

	Public Buildings and Contents							
	Churches and Chapels. (4)							
16	Fireproof	18	12,500	59	....	....	....	....
18	Brick	19	44,500	611	....	....	....	....
20	Frame	20	6,550	113	....	....	....	....
	Other Public Buildings. (6, 8, 24, 604)							
22	Fireproof	21	38,950	382	....	....	....	....
24	Brick	22	17,500	475	48	4,000	111	....
26	Frame	23	....	....	....	....	5	....
	Total		2,083,625	24,417	12,159	66,025	1,194	325

Underwriting Experience—Continued

Special Risks—Buildings and Contents

State No.	Class		Protected and unprotected		
			Business written	Premiums	Losses
28	Cereal, grist, feed, rice and flour mills. (370, 420)	31	4,000	105	2
30	Cotton, no compressing. (256)	32	.....	.....	.....
32	Cotton compresses and warehouses and platforms communicating therewith. (256)	33	.....	.....	.....
34	Cotton yards and platforms not communicating. (628)	34	.....	.....	.....
36	Cotton gins. (402)	35	.....	.....	.....
38	Farm risks (including live stock written as farm property). (16, 703, 704)	36a	.....	.....	109
40	Grain elevators and warehouses, fireproof construction. (430)	37	.....	.....	.....
42	Grain elevators and warehouses, other construction. (430, 432)	38	56,366	633	318
44	Lumber yards, all classes. (650, 652)	39	3,500	18	.....
44a	Metal workers. (322, 324, 326, 338)	54a	38,650	483	18
46	Mining properties other than coal. (458.)	40	.....	.....	18
48	Mining properties, coal. (388, 390)	41	3,000	69	.....
50	Oil risks (mineral or earth). (470, 472)	42	.....	7	.....
52	Oil risks (vegetable and fish). (464, 466, 468)	47	.....	.....	.....
54	Railway risks (steam and electric). (670)	48	40,000	318	917
56	Seasonal cottages and their outbuildings. (14)	49	1,000	9	.....
58	Tobacco warehouses, saleshouses, stemmeries, prizeries and rehandling houses. (276, 516)	50	7,000	72	.....
60	Tobacco barns (country). (682)	51	.....	.....	.....
62	Wharf risks. (197)	52	.....	.....	.....
64	Woodworkers. (300, 302, 304, 306, 308, 316, 318, 320)	53	19,200	304	.....
66	Miscellaneous manufacturing risks. (346, 350, 352, 354, 356, 358, 366, 368, 372, 374, 386, 394, 396, 404, 406, 412, 418, 424, 426, 438, 442, 450, 452, 460, 474, 476, 480, 484, 486, 490, 492, 494, 498, 502, 504, 506, 508, 510, 514, 522, 526, 528, 654)	54	170,795	3,224	460
68	Sprinklered risks	58	424,500	1,564	231
70	Sprinkler leakage	59	.....	.....	.....
72	Hail	60	.....	.....	.....
74	Tornado	61	546,400	2,351	90

76	Miscellaneous risks not properly assignable to any of the above classes. (278, 416, 446, 617, 624, 630, 642, 648, 656, 672, 674, 702, 706)	62	58,050	1,818	.....
78	Use and occupancy	63	50,000	288	.....
80	Rent, leasehold, commission and profits	64	.....	.....	.....
82	Automobiles (all business)	72	.....	.....	.....
84	Explosion	73	.....	.....	.....
86	War risk, riot and civil commotion	74	.....	.....	.....
88	Registered mail and parcel post	71	.....	.....	.....
	Total		1,422,461	11,263	2,163

	Business written	Premiums	Losses
Total—2 to 26—protected	2,083,625	24,417	12,150
Total—2 to 26—unprotected	66,625	1,194	325
Total 28 to 88—protected and unprotected	1,422,461	11,263	2,163
Grand total, all classes	3,572,711	36,874	14,647

Other Earnings

Total Prems. to Reserve Ratio applied to Mo. Prems. on result 1¾%.
(x) Interest earned on unearned premiums on Missouri Business $434.20
(xx) Interest earned on capital stock and surplus, pro rata for Missouri 2,248.34
Give method of computing these items.
Total Prems. to Mo. Prems. = 024038 applied to Total Int. Receipts.
Mechanics Traders Ins. Co.

[fol. 2388] Mr. Folonie:

Q. Have you the letter which was sent out from the department in connection with this 1918 blank?

A. Yes sir.

Mr. Folonie: We offer it in evidence.

(Whereupon the document so referred to, having been by the reporter marked Plaintiffs' Exhibit 1353, being so offered and introduced, was admitted in evidence, and is in words and figures as follows, to-wit:)

[fol. 2389] PLAINTIFF'S EXHIBIT 1353

Insurance Department, State of Missouri, City of Jefferson

Alfred L. Harty, Superintendent

February 12, 1919.

GENTLEMEN: We have just discovered that there was an error made in the printing of the blanks of this department for reporting "Underwriting Experience by Classes" for the year 1918.

The blank as printed and sent to you calls for the report to show "gross business written, gross premiums received, and gross losses incurred" which is not in accordance with the Missouri law.

Sec. 11 of the Rating Act, under which these reports are made, specifically states that the report shall show "net amount of business in force and written, net premiums received and net losses paid for each class."

You will readily understand, therefore, that there is noth-
[fol. 2390] ing for this department to do under the circumstances but to ask you to make this report showing these items net instead of gross, and we are enclosing you new blanks on which we will ask you to make this report on the net basis.

The report should follow instructions on the blank to deduct cancellations, but without deducting reinsurance ceded or adding reinsurance assumed.

The net business written, net premiums received and net losses paid should, when reported in this way, be the same as these items of net risks written, net premiums received

and net losses paid shown in your report of Missouri business on page 7 of your annual statement.

This department realizes that, with the prevailing shortage in efficient office help, the discovery of this error at this late date, when you have in all probability practically completed the making up of the report, and asking that it be now made on a net basis, is working a hardship on you and we regret it exceedingly.

Under the circumstances we shall not, of course, expect you to be able to complete and file this report by March first, the required time of filing, and we are willing to make any reasonable extension of time for filing, but we are going to ask you to prepare and file your report by April first if at all possible for you to do so.

Yours very truly, Alfred G. Harty, Superintendent.

EGMo—FR.

[fol. 2391] Mr. Folonie:

Q. Mr. Hobbs, in connection with your preparation of this case have you found that misunderstandings had existed on the part of the companies in making their answers to these blanks, and, if so, state how they arose and what the nature of those misunderstandings was which caused errors or discrepancies in their figures filed in answer to them.

[fol. 2392] A. The blank for the year 1917 states in the instructions, "This report must be made on net premiums and net losses." By net premiums and net losses is meant premiums and losses less returned premiums and reinsurance in companies authorized to do business in Missouri, and no other deductions should be made." The blank for the year 1918 originally read, "Report gross business written, gross premiums received and gross losses incurred, less cancellations, on each item in each class, without deducting reinsurance ceded or adding reinsurance assumed."

The letter from the Insurance Department dated February 12th referring to that blank states: "We have discovered that there was an error made in the printing of the blanks of this department for reporting 'Underwriting Experience by Classes' for the year 1918."

Without reading this letter, it states that the word gross in each case should be made net, and the word incurred, referring to losses, should be made paid. It would make it on the same basis as the blank for the previous year. However, this letter——

The Referee: What suggests that change?

A. The instructions from the Insurance Department.

The Referee: Is that in evidence?

Mr. Folonie: Yes. It is a letter from the Insurance Department which I offered in evidence.

The Witness: This letter goes further and states: "You will readily understand, therefore, that there is nothing for this department to do under the circumstances but to ask [fol. 2393] you to make this report showing these items net instead of gross." "This report should follow instructions on the blank to deduct cancellations, but without deducting reinsurance ceded or adding reinsurance assumed." Then it goes on to state: "The net premiums written, net premiums received and net losses paid should, when reported in this way, be the same as these items of net risks written, net premiums received and net losses paid shown in your report of Missouri business on page 7 of your annual statement."

Consequently the companies had before them the method of the previous year, which was to consider authorized reinsurance. The method of this blank as changed reads to report net business without deducting ceded or adding reinsurance assumed, and then this letter states that this will agree with the report on page 7 of the annual statement, which left a doubt in their mind as to whether it was to be gross, net, which would mean gross less returned premiums, without deducting re-insurance ceded or adding reinsurance assumed, as called for in the balance of this blank not changed, or whether you should deduct your re-insurance and get your net figure, which the blanks calls for, the same as was done the year before. Consequently some companies reported one way and some another way.

Q. What does the annual statement call for or prescribe at the page that is referred to in that letter?

A. It calls for both. Both a gross net and the authorized net.

[fol. 2394] Q. You mean that on that page there is a figure where reinsurance is taken into consideration and also a figure where it is not?

A. Yes.

Q. Does it refer to the lines of that page in the letter?

A. No.

Q. Just the page?

A. Just the page.

Q. Have you found in your investigation of this matter that some of the companies did it one way and some another?

A. I have.

Q. Now, what about the later blanks?

A. The blanks for the years 1919, 1920 and 1921 called for gross direct business written less only cancellations. Gross direct premiums received less only returned premiums. Gross direct losses paid less only salvage on each class, reinsurance either ceded or assumed to be disregarded entirely except that in taking over the entire business of a given territory—that is the same in both blanks.

Q. Now, to an insurance man is the requirement of this blank the same as the one you had before, or does it differ and if so in what particular?

A. Which blank do you refer to?

Q. 1918.

A. The requirement of the 1918 blank might be either.

Q. Yes. You mean it might be the same as this or might be different?

A. Might be different.

Q. Is it the same or different than the 1917 blank?

A. The same question arises.

Q. Now, with respect to the requirements on the back of these blanks, particularly relating to taxes, to bureaus and inspections and surveys—I refer to item 5 under expenses, [fol. 2395] "Inspection and rating bureaus expenses paid in Missouri," and then the item here numbered 11, "Inspections and surveys including underwriters' boards and associations," under item 5; and then your federal gross premium tax under item 4 above, and then your pro rated item of "federal income tax and federal excess profits tax,"—will you tell us what discrepancies you found with respect to those various items on the expense item as to

where they have been differently construed by different companies and wherein discrepancies exist in construing those blanks and out of what they arise?

A. The blank for 1917 calls for "rating bureau, inspection and surveys, protective departments and fire prevention bureau expenses." The blank for 1918 calls for the same information. The blank for 1919 calls for "inspection" in "rating bureau expenses" under item the heading of which is "Paid in Missouri." Item 11, which is after it in parenthesis 13 calls for inspections and survey including underwriters' boards and associations, and then in parenthesis, "Do not include item entered under item 5 above," and down below there is a note which reads, "Numbers in parenthesis refer to similar items on disbursement page of annual statement blank."

Consequently, in reporting item 11 a company would take the amount shown on their annual statement under item 13 as called for by the blank and pro rate to Missouri that entire item less the amount included under item 5.

[fol. 2396] Q. Well, what's the matter with that? Suppose it did, what of it?

A. The result would be that you would pro rate to Missouri the expense of inspections against those in all the rest of the United States.

Q. In other words, if you had an inspection bureau in the State of Illinois which confined its inspection services entirely to inspecting property in Illinois the effect of following this blank literally would be that part of the expense of that Illinois inspection bureau would then be pro rated and charged to Missouri, is that right?

A. That would be the effect.

Q. Did you find that that kind of a procedure was very commonly gone through with by the companies in following this blank?

A. It was.

Q. Now, does similar error run through these blanks as to all these different years?

A. In the year 1920 the items on the blank remained the same but the figures in parenthesis were omitted.

Q. That is the figures referring to annual statement blank?

A. The figures referring to annual statement blank were omitted.

Q. Well, did the companies then pursue the same theory they had been doing the year before, or different?

A. They were, because the instructions are identical. The same thing is true of 1921.

Q. Well, now, do you recognize that by literally following the instructions of the blank it would lead to an improper conclusion as to what the expense of a company was in Missouri?

A. I do.

[fol. 2397] Q. And it would go to making the expense item different than it was in fact?

A. The front of the blank states: "Give complete information under each item called for in this blank including other earnings and expenses to avoid the necessity of our returning the blank for correction." In questioning this item with individual companies as to the reason why it was high, they have invariably stated that any time they do not follow a Missouri blank literally it is returned to them for correction. The only way to secure its acceptance is to follow it literally.

The Referee:

Q. And your testimony is to the effect that a literal following of the blank would result in allocating to Missouri expenses which did not really arise out of the business in that state?

A. Yes, sir.

Mr. Folonie:

Q. Is there any similar room for error which has in fact resulted in error so far as using those blanks is concerned—so far as the tax items are concerned, and relating particularly to federal taxes?

A. In the blank for 1917 there is only one item which refers directly to taxes and that is item 3, which states: "Taxes, licenses and fees paid in Missouri." Under that blank all other taxes would be under item 5, which reads: "Proportion of home and department expense not included in any of above."

That same thing was true in 1918.

In 1919 when the expense tabulation was changed there was one item, number 4, 14 in parenthesis following it,

which reads: "Federal gross premium tax," which is an [fol. 2398] item not pro rated. It is an actual paid item.

Under item 15, with 14 in parenthesis after it, the blank calls for "federal income taxes" and under item 16, with 14 in parenthesis following it, it calls for "federal excess profits taxes" and the blank calls for a pro rate of the annual statement amount to Missouri.

The Referee: Mr. Blume, read the last part of that answer.

(Answer read by the reporter.)

The Referee:

Q. What is the effect of that, Mr. Hobbs?

A. The effect would be to pro rate entire item 14 of the annual statement, federal income tax and the federal excess profits taxes, to Missouri in the proportion that the Missouri premiums would bear to the total premiums of the country.

Mr. Folonie:

Q. Literally followed, would that make for any duplication or not?

A. I am not sure.

Q. All right. Did you find that the interpretation put on these things by different companies led to a uniform course of replies on the question of taxes, or did they vary?

A. It is my—I believe they were uniform in reporting those items the way the blank called for.

Q. All right. Now, with respect to the expenses on the back, is there a direction on the back whether these expenses specifically—whether these expenses should be those expenses applicable to hail, lightning, fire, hail, wind-storm [fol. 2399] and tornado, which are reported on the inside of the blank, or whether these expenses should relate to the expenses of the company in their entirety in the State of Missouri?

A. No, no instructions whatever.

Q. Have you found that the companies acted uniformly in the particulars in that they all returned expenses relating only to those classes, or that they all reported them relating to those special classes, or did they do it differently?

A. They varied. As the blank varied from year to year in regard to the number of classes called for and in that the blank for 1917 had an item number 36 which included the aggregate for all other classes not shown above, the companies had been in the habit of reporting all Missouri expenses; all commissions and such items.

I find that a great many companies never changed that method. Because of the absence of any instructions on the blank, they continued to report their total expenses regardless of the relationship they might bear to the premiums reported on the blank.

Q. Did other companies do otherwise?

A. Some companies have reported only such items on the expenses as would relate to the premiums reported in the blank.

Q. In other words, there is no uniformity of conduct by the companies in the way that they reported the expenses, whether upon all of their business or only those parts?

A. None whatever.

Q. Well, do you know now which way they should have done?

A. There are no instructions on the blank.

[fol. 2400] The Referee: We will take a five minute recess here, gentlemen.

(Which was accordingly done.)

Mr. Folonie:

Q. Now, Mr. Hobbs, will you refer to your 1919 underwriting experience blank there where the item of Federal taxes appears, both in the direct and in the pro rated items, and read them, together with the reference to annual statement blank?

A. Item 4 reads as follows: "4 (14)——"

Q. That refers to what?

A. Item 14 on disbursement page of the annual statement.

Q. All right; go ahead.

A. (Reading:) "Federal gross premium tax, item 15——"

Q. That is a direct item, now, is it, according to the blank?
A. Yes.
Q. Go ahead.
A. "Item 15"——
Q. Is that a pro rated item?
A. Yes. It reads: "15 (14) Federal Income Tax. Item 16,"—which is a pro rated item, reads: "16 (14) Federal Excess Profits Tax."

Mr. Jacobs: What were you reading from then, the annual statement report or the underwriting report?
A. Underwriting report.
Mr. Jacobs: For what year, when you said parentheses?
A. Refers to page 14 of the annual statement blank, does it not? No, refers to item 14 on the disbursement page of the annual statement blank.

Mr. Folonie: All right. Now, how does that item on the annual statement blank on the disbursement page, how did that item read—as to Federal taxes?
[fol. 2401] A. Just reads "Federal taxes."
Q. That is, the premium tax and the income tax and excess profits tax all in one report there?
A. Yes, sir.
Q. So that by referring to that page, if a company would take the gross amount of the Federal taxes and deduct the direct item of premium taxes paid in Missouri and then pro rate the balance of that item, they would be pro rating the premium taxes in other states to Missouri, would they not, if they did that?
A. They would.
Q. Did you find that some of the companies did that, went through that process?
A. One or two that I remember checking; I didn't check very many of them. One or two that I remember checking that particular feature, that was done. That point came up in connection with our hearing at the Insurance Department.

The Referee: To what issue is this proof directed, Mr. Folonie?
Mr. Folonie: It is simply directed as explanatory in conjunction, if the court please, with cross examination which

has been had of several witnesses here as to their underwriting experience by classes blanks and the figures——

Q. Now, is it a fact that the combined companies for the year 1919 doing a tornado business in the State of Missouri wrote $1,087,119 worth of premiums? I show you "Missouri Insurance Company report," a book from which you have quoted some during your testimony, and ask you whether or not the figure I just read is correct.

[fol. 2402] Mr. Folonie: I think you misquote as to the year, though. You have 1918 in this book, which would be for the year 1917.

A. That is not the figure.

The Referee: Get the name of that book right.

Mr. Jacobs: "49th Missouri Insurance Report."

Mr. Folonie: That covers experience in 1917, doesn't it, Mr. Jacobs?

Mr. Jacobs: Yes, this is the 1918 book. I thought it was a later date.

Q. Now, what was your figure on premiums?

A. $1,098,223—that is wrong. $1,108,223.

Q. $1,108,000. Now, what are the losses for that same period?

A. $277,054.

Q. So you have $1,108,223 premiums and losses of $297,-054 for that year?

A. Seventy-seven.

Q. $277,054 worth of losses and $1,108,223 worth of premiums?

A. Yes, sir.

Q. Now, I want to call your attention to the "51st Missouri Insurance Report" for 1920, which would be the business for 1919, wouldn't it?

A. Yes, sir.

Q. And ask you what the premiums were for tornado business that year in the State of Missouri.

(Witness makes calculation.)

Mr. Folonie: I want the record to show the witness is making calculation from the book so presented to him by counsel.

Mr. Jacobs: And one that was testified to on direct by the same witness.

Mr. Folonie: That's right. I just want to show the source of the information, that's all.

[fol. 2403] The Referee: That fact may be shown in the record.

Mr. Folonie: I don't say that by way of disparagement but simply to identify the source from which it is now being derived.

Mr. Jacobs:

Q. What were the premiums for that year?

A. $1,426,697.

Q. And what were the losses?

A. $229,231.

Q. And are those losses incurred?

A. Losses paid.

Q. Losses paid, did you figure?

A. Yes, sir.

Q. Not incurred?

A. Not incurred.

Q. So as between your premiums for that year and your losses paid you have $1,200,000, roughly, didn't you? In other words, you had $1,426,697 premiums and $229,231 losses?

A. Yes, sir.

Q. That was the tornado experience of all the companies in the State of Missouri for that year?

A. Stock fire insurance companies.

Q. That is what I mean. Of course, that is all we are inquiring about here, isn't it?

The Referee: That is stock fire insurance companies in the tornado line of business?

A. Yes, sir.

The Referee: Yes. Does the difference between the two items given represent what may properly be called the gross profit in that line of business for the time given?

A. Well, I can't judge on what you mean by gross profits.

[fol. 2404] The Referee: I don't know myself. I am trying to find out.

A. Well, I couldn't say it meant that. I don't know what you mean.

The Referee: What does that represent?

A. That is the difference between the premiums written and the losses paid.

The Referee: And the expense of the business is to be deducted from that sum?

A. All outstanding liabilities should be deducted in arriving at a profit.

The Referee: In arriving at a net profit for the given year on that particular line of business of all the companies what further steps would you take from the figures before you to ascertain what the net profit was?

A. Practically all tornado business is a term business and written very largely for a three year term. A relatively small amount of tornado business is written for five years but there is some, particularly on dwellings, and you would have to determine your earned premiums that year in order to arrive at a profit for that year on the tornado business, which would mean you would have to have your outstanding liability at the beginning of the year and your outstanding liability at the end of the year.

Q. If you deduct from the total gross premium receipts the total paid losses, apportion the expense of overhead in that particular line of business, and deduct that, also deduct whatever sum experience might show would be a fair [fol. 2405] deduction for anticipating losses, would you then arrive at the net profit on that year's business in that particular line?

A. No, sir.

Q. What else should be deducted?

A. Your unearned premium.

Q. Well, how would you arrive at the net profit on the tornado business in this state for the years which you have those statistics now before you?

A. I would take the figures—taking the last year we used of $1,426,697, and I would add to that the unearned tornado premiums as of December 31st of the previous year and deduct from that total the unearned premiums as of December 31st of this year, which would give me the earned premiums for that year; in other words, it would give me the amount of money which the company would be entitled to retain out of the premiums they had written.

Q. And if the business had remained absolutely stationary, neither increasing nor declining in volume for the period, would that give you an entirely accurate result?

A. It would give me an accurate result, I think, either way, but answering your question I would say, yes. But the year before here is $1,108,000, and this year is $1,426——

Q. (Interrupting.) Yes, I know the effect the fluctuation in the volume of business may have. Well, then that method of calculation last suggested by you would, in a year where the business remained at a dead level, give the net profits on that particular line of business for that period of time?

A. Yes, sir.

The Referee: Proceed.

[fol. 2406] The Witness: Well, pardon me. Assuming, of course, that this is an absolute net premium to begin with. I merely took the figure from the book and I don't know what net figure it is, but we will assume that the figure itself is absolutely net. Then I answer your question correctly.

The Referee: I had assumed in my question that the larger figure given represented the total amount of premiums received on tornado insurance for the given year by all of the companies. Now, on that method—on that assumption, would the method of calculation you have given give me the net profits?

A. Yes, sir; it would; yes, sir.

Mr. Jacobs:

Q. Now, you say that your method of calculation on that $1,426,000 worth of premiums would be to deduct from it the outstanding—add to it the outstanding unearned premiums of the preceding year and deduct at the end of the year the outstanding unearned premiums?

A. Yes, sir.

Q. But in charging expenses incurred, in arriving at your calculation, you charge for that year of 1919 the entire expense of doing that $1,426,000 worth of business, don't you?

A. Yes, sir.

Q. I listened to your statement of your insurance experience and it has largely been in the matter of making rates and connection with various actuarial bureaus, hasn't it?

A. Yes, sir.

Q. It has never been in the underwriting part of the business, has it—that is, your experience?

A. No, sir.

[fol. 2407] Q. Nor in the banking and investment part of the business?

A. Only insofar as my activities with the bureaus have made it necessary for me to investigate that end of the business; but my actual experience with the company has not been in that line, no.

Q. And your connection with the bureau has been rather with the bookkeeping end or the calculation of the experience of the company, hasn't it, and not a practical experience in the actual operations of either the underwriting or the investment end of the insurance business?

A. That is true.

Q. So that you are not in a very good position to give an accurate statement of what part of the time of the various officials of the company is devoted to one branch of the business and to other branches of the business?

A. Only insofar as my investigation would develop.

Q. But your personal experience has not been along that line?

A. I have never been a company executive, no.

Q. I notice you say they give about one-half of one per cent of their time to the investment end of the business.

A. No, sir; I said investment expense would represent ½ of 1 per cent of the earned premiums.

Q. Well, what do you mean by that?

A. All the expenses in connection with the investment activities.

Q. Does that take in the calculation any proportion of the time of the executives?

A. Yes, sir.

Q. And figuring their salaries and so forth?

A. Yes, sir.

[fol. 2408] Q. So then you are giving a calculation upon, in part at least, the time devoted to the business?

A. In part, yes.

Q. And to the other expenses?

A. Yes.

Q. You have taken part of the office hire or of the auditing expense and part of the stenographers' expense?

A. Only where it relates to the investment.

Q. Well, some part of it relates to the investment end of the business and some part of it to the other branches of the business, doesn't it?

A. Yes, sir.

Q. And there is a proportion somewhere in there that you had arrived at in reaching this figure you gave to the court?

A. Yes, sir.

Q. And you concluded that, in arriving at the expense that ought to be charged against the investment end of the business, that it amounted to about ½ of 1 per cent of the premiums. Did you mean premiums earned or premiums received?

A. Earned.

Q. It would amount to a lot less than that on the premiums received, if you were basing it on a calculation of premiums received?

A. Depend on the year.

Q. Well, on the five years under inquiry it would, wouldn't it?

A. It would, yes.

Q. Now, that is '17 to '21 inclusive, isn't it, both ways?

A. Yes, sir.

Q. Now, the companies of the country had invested in 1917 $640,126,306. Now, do you think that all of those investments of that vast sum of money, looking after it and the annual investments and the collection of interest and the bookkeeping and the general care that would go with [fol. 2409] the investment of 640-odd million dollars could be done at an expense of ½ of 1 per cent of the earned premiums?

A. I do.

Q. And in 1918 the companies had invested $729,679,990, and you feel the same way about that?

A. Yes, sir, I do.

Q. And in 1919 they had $842,701,806, and you feel the same way about that?

A. I do.

Q. And in 1920 they had invested $957,185,550, and you feel the same way about that?

A. I do.

Q. And in 1921 the companies had invested $987,528,111——

A. (Interrupting.) I do.

Q. Now, I notice there is an ascending scale in the amounts of their investments through all of those years.

A. The figures you read have increased each year, yes.

Q. Have you any notion of what it costs the ordinary investment company to handle sums of money for investment?

A. No.

Q. Have you ever investigated that or looked into it at all?

A. No. I know to buy and sell in the investment, the margin of profit or charge they make is very small.

The Referee:

Q. Could that business be handled at that expense, separate and alone, entirely disjoined from the underwriting end of the insurance business, Mr. Hobbs?

A. I don't think so.

Mr. Jacobs:

Q. How much would it be increased?

A. I don't know.

[fol. 2410] Q. On this last investment of 1921 of $987-odd dollars, do you know what you are allowing for the expense of investment? Have you before you the total earned premiums so you could take ½ of 1 per cent of them for that year and tell us how much money you allowed as expenses, according to your calculation, for the handling of that sum of money?

A. I have not the figures before me.

Q. You couldn't give me that?

A. No, sir.

Q. Now, Mr. Hobbs, I have before me a form of the underwriting experience by classes report used by the State of Missouri, and I am directing my attention particularly to Item 4, under "direct expenses paid in the State of Missouri," and items 13 and 16, which are allocated items below that. Now, you were in Chicago at the time testimony was taken there, weren't you?

A. Most of the time, yes.

Q. And were present during that time?

A. Most of the time, yes.

Q. And you recall in the examination of some of the witnesses produced by the plaintiff companies here it developed that there was a duplication of expenses in the report filed with the State of Missouri by the companies—you recall that, don't you?

A. Yes, I do.

Q. It was in the light of that development that you have given this explanation to the court today?

A. No, sir.

Q. That has nothing to do with the explanation you gave the court?

A. I knew that long before that hearing in Chicago.

[fol. 2411] Q. But perhaps the court didn't know it. What I am getting at is this: Did you make the explanation concerning the obscurity of some of these state requirements in order to explain the duplication of expenses as were developed in the Chicago hearing?

A. I don't know what Mr. Folonie had in mind in asking the questions.

Q. You have no notion about that, is that right? What was your notion in going into the matter and what were you driving at?

A. Why, I assume he asked the questions to show the blank by its requirements would necessarily bring about erroneous conclusions as to the expenses.

Q. Purely as an academic matter?

A. No, naturally it had relation to this case.

Q. You say you thought it had some relation perhaps to the development of some testimony in this case?

A. Yes, it has. It has considerable relationship to the various questions which have come up from time to time in connection with this suit.

Q. Is it your notion that the purpose of the state in having these various reports made each year is to get the actual experience of the insurance companies in the State of Missouri?

A. I certainly do.

Q. That is your notion, that that is the purpose of the state?

A. Yes, sir.

Q. Now, Item 4 provides for direct expenses paid in Missouri, federal gross premium taxes, and items 15 and

16 in that column devoted to allocated expenses provide, 15, federal income taxes, 16, federal excess profit taxes. [fol. 2412] Now, under the allocated column there is nothing at all about any federal premium tax, is there?

A. No.

Q. Were you confused or do you think the companies were confused when they put the federal gross premium taxes paid in the State of Missouri under 4, and thought that the state also wanted them to allocate the same kind of taxes paid in other states to the State of Missouri in arriving at the expense of doing business in the State of Missouri?

A. The blank which you have before you calls at the head of it for the total for all states, and when you give the total of item 14 you are going to give the total of your premium taxes.

Q. I understand; but will you take this blank and show me where, under that column providing "total for all states" there is any requirement for a premium tax at all?

A. There is not.

Q. It isn't there, is it?

A. Not under items 14 or 15.

Q. No, that entire item under "total for all states" on this blank, is there?

A. No, sir.

Q. Is it there?

A. No, sir.

Q. Were you under the impression that the State of Missouri wanted you to put in there something that is not called for in that list?

A. No.

Q. Very well. Now, what would be your purpose, then, Mr. Hobbs, in charging under direct expenses federal gross premium taxes as paid in the State of Missouri, whatever their amount might be, and then later on, without a requirement under that part called "allocated expenses" have a [fol. 2413] premium tax at all allocated to the State of Missouri, premium taxes paid in other states in the nation, all the other states in the nation?

A. The blank for the previous year referred to item 14 on the disbursement page of the annual statement blank, Item 14——

Q. (Interrupting.) Where is that?

A. 14, and then the note, Item 14 of the annual statement blank reads "federal taxes" without any designation as to whether they are excess profit taxes, income taxes, or gross premium taxes.

Mr. Folonie: Let him finish, now.

A. And these two Items, 15 and 16, on this blank, are grouped in pro rating. Consequently, some companies reasoned that this being up here it should be deducted and not put in again down here, under items 14 and 15 of the classification blank, because it is specifically called for under item number 4; but inasmuch as the annual statement figure was one figure of federal taxes, they deducted the amount reported up here and pro rated the balance.

Q. Well, let me understand you: First you charge——

The Referee: Pardon me. To what particular issue does this relate?

Mr. Jacobs: I am inquiring particularly into what I regard as an explanation of certain testimony that they put in in Chicago showing a duplication of expenses.

The Referee: Well, suppose it did, what difference does it make?

[fol. 2414] Mr. Jacobs: Only that we wanted to show that these reports upon which rates are built in the State of Missouri reflected true expenses of the companies in the State of Missouri, because if there was duplication of expenses naturally there would be an unwarranted increase in total expenses.

The Referee: Suppose they do not correctly reflect it. The purpose of this investigation is to ascertain what the facts are and then determine from the evidence heard here, is it not, what the facts may be?

Mr. Jacobs: That is true.

The Referee: Now, I am simply seeking to avoid unnecessary consumption of time and white paper.

Mr. Folonie: I am perhaps partly to blame for this. I rather led into this subject and I may say that perhaps to some extent I anticipated what our opponents may do. It is my purpose more—this might perhaps more properly come if they produced any of these blanks here, although they interrogated witnesses previously as to these blanks. I don't

know that my order of proof, perhaps, is perfect, but some place along the line this question is involved, and I have rather anticipated something to come and which has in part already come.

The Referee: What I have in mind is this—of course, I have no desire to dictate the order in which counsel shall introduce proof, nor any desire, of course, to infringe upon the rights of the parties in any respect—but what difference does it make whether those reports which were made were correct in fact or not?

[fol. 2415] Mr. Jacobs: I am not at this moment in position to say there is any difference in that from those tabulations that have been offered.

The Referee: Well, suppose there is. If they are the same then why is it pertinent to show that they are the same as the reports, and, if they are not the same, how does the difference become material? What we are seeking to get at is the truth and fact. How is the accuracy and the truthfulness of those reports at issue in this case?

Mr. Jacobs: Of course, my understanding of the law of the case was that these reports represented the experience of the companies in the state, and it was upon these reports that the Superintendent of Insurance based his action.

The Referee: Well, now, then the proof that is being heard here is to determine whether or not the order of the superintendent is a proper one, not as I understand it, in view of what the report contains, but in view of what the truth is.

Mr. Leahy: That's the point.

Mr. Folonie: The relevancy of it at this point, if any is to show the falsity of the basis on which the superintendent entered his order.

The Referee: What difference does that make? If correct——

Mr. Folonie (interrupting): Your Honor's logic sounds very unanswerable.

[fol. 2416] Mr. Jacobs: Is the court's position to be that the matter is limited into an inquiry into the testimony and tabulations given in this hearing?

The Referee: Why, in substance that is my thought. To expound that possibly a trifle further, Mr. Jacobs, whether or not the order made by the superintendent should be set

aside or executed depends, not upon whether or not the companies heretofore have made false or truthful reports, but depends upon the actual fact, whether shown by the reports or not. Now, then, if that be true, how would it tend to elucidate this question for the state to show that every report issued by every company was false?

Mr. Jacobs: Well, for the simple reason here is the situatioin: I asked the witness this morning if he knew whether it was a fact that under the recent tabulations offered in evidence here there was an increase with reference to a particular company of—an average increase of from 2 to 8 per cent in the expense item over the reports made to the State of Missouri. Now, it seems to me that if they should come in here with increased expenses for example, that there are these reports which they have hitherto made and which said were expenses at that time is competent at this time.

The Referee: I think that is true.

Mr. Folonie: As instruments of evidence I think probably they would be, then.

The Referee: I think so; but merely to show that given reports——

[fol. 2417] Mr. Folonie: Practically admissions against interest.

The Referee: Yes. Merely to show that a given report is inaccurate, nothing further appearing, does not seem to me to shed any light at all upon any issues here. Now, if you can show a contradiction, a given set of affairs as shown by the plaintiffs in respect to a given company at a given time, and if the reports on file by that same company will show at that time a statement of facts more beneficial to the state than that now testified to, that would be entirely competent, in my judgment; otherwise not.

Mr. Jacobs: In reference to this testimony that has gone in, Mr. Hobbs testified to certain situations with reference to these requirements——

The Referee: Yes.

Mr. Jacobs: —and I don't know for what reason—he said he doesn't really know himself, but he has testified to it as showing that these reports of the state were—called for facts that would perhaps confuse these companies.

Mr. Hogsett: It is just for this reason: By the agreement—by the cross-examination by counsel for the defend-

ants of witnesses that we have produced at great length—a great deal of time has been spent in showing error in those reports. Now, that being true, we have a right to explain or offer evidence that would tend to explain why those errors could occur.

The Referee: Whether the errors existed or not and whether the errors were excusable by reason of [fol. 2418] ambiguities in the requirements of the department or not are matters——

Mr. Hogsett: I grant that, but the sole purpose of this testimony is to explain why those errors did occur and solely brought out by the cross examination. Our position is that the sole test, the sole question of fact or at least the principal question of fact is whether the companies, in the five year period in question, made or lost money in fact; not according to what they may have reported on this blank, that blank or the other blank. Now, in proving those facts, tending to establish that ultimate issue, by cross examination the witness has been attacked, and in effect—I mean properly attacked, I don't mean any unfavorable insinuation there—but has been attacked with reference to figures which they have reported. Now, we have a right to come forward with evidence showing why those mistakes could legitimately have occurred.

The Referee: The only evidence so far as I see with respect to that matter which is competent is such evidence as has been offered here tending to show ambiguities in the requirements.

Mr. Jacobs: Well, then, I ought to be permitted to go on and show whether or not there are in fact ambiguities.

The Referee: Surely.

Mr. Jacobs: That is the real purpose. Your Honor will recall that up until the time those duplications developed the witnesses for the plaintiff companies were testifying upon these reports and these reports were only [fol. 2419] abandoned when their accuracy—after these developments came.

Mr. Hogsett: No. You are quite in error, and I will recall to your mind these facts: That in Mr. Tolle's evidence—he says, he was the witness on the stand—he was asked whether or not the figures which you are now testifying to, are they the same or different from the figures re-

ported in your annual statement blank and in your tax return schedule, and in each case he answered "yes."

Mr. Hyde: They are different.

Mr. Hogsett: No, they are identically the same. You didn't ask any witness whether they were the same as the underwriting experience by classes blank.

Mr. Jacobs: I submit that is not exactly what happened. The comparison between the figures testified to and the annual statement report and the tax report, limited to those two reports, and with reference to the underwriting by classes report, never began until after these discrepancies developed.

Mr. Hogsett: You are just wrong about that.

The Referee: It seems to me that it doesn't make any difference which of your is correct on that matter. The only purpose for which this proof with respect to the ambiguities in the reports and blanks—I mean the requirements of the department—is competent is in order to explain why the reports differ where they do differ from the facts testified to. Now, then, it seems to me, Mr. Jacobs, that the only relevant inquiry upon your part along that [fol. 2420] line is to show by this witness or others, if you can, that those ambiguities do not exist.

Mr. Jacobs: Well, then, I will limit myself to that feature of it.

The Referee: It seems to me that is all that is pertinent.

Mr. Jacobs:

Q. Well, now, Mr. Hobbs, taking again this underwriting by classes report, do you think that there is anything in there that would be ambiguous or confusing to an ordinarily intelligent person, where there is no requirement under that column which we will call the "allocated expense column" calling for premium taxes at all?

A. I do.

Q. Well, under item 4 of direct expenses you have got the specific item, "federal gross premium taxes," and that is charged to the State of Missouri, isn't it?

A. Yes.

Q. Down here all that you have got is item 15 and also 16, "1, federal income tax." There is nothing there about premium tax, is there?

A. No.

Q. And that doesn't mean premium tax, does it?

A. No.

Q. Next is "federal excess profits tax." There is nothing there about premium taxes, is there?

A. No.

Q. And that doesn't mean premium taxes, does it?

A. No.

Q. So as far as that blank is concerned do you think there is anything confusing about that requirement that would lead someone to put into those allocated expenses in this allocated column premium taxes that were paid in other states of the Union outside of the——

[fol. 2421] A. Considering the fact of the way the blanks have been made up in the past, I would say yes.

Q. There is no reference to any other blank on this one, is there?

A. No.

Q. So there wouldn't be anything wrong about that, would there?

A. The form in general follows the blank of the year before. The items at the side are identical with the exception of the fact of the reference to the annual statement blank being omitted and a grouping of the amounts under federal income taxes and federal excess profits taxes is omitted from this blank, as it appeared on the face of the blank.

Q. There is nothing to confuse anybody in this form, is there? Anybody who made a pretense of knowing anything about getting up a report?

A. You are talking about tax items only, now?

Q. Yes.

A. No, I think it should have been filled out properly.

Q. And accurately?

A. And accurately, yes.

Q. Then you have another report of another year which refers to an item in the annual statement report?

A. Previous year.

Q. That is the one you have testified about?

A. Yes.

Q. When you turn to the annual statement report you see something there about the government federal taxes?

A. Just one item, "federal taxes."

Q. Now, by reference to "federal taxes" do you think that carried with the thought that would confuse the person making up the report, that it referred to something that [fol. 2422] was not enumerated in this underwriting report?

A. Why, the blank specifically stated it referred to Item 14.

Q. And it does state "federal taxes," doesn't it?

A. Yes.

Q. But Item 17 or 14, whatever it was—15, specifically provided for a certain kind of federal tax, didn't it?

A. Yes.

Q. Of course, as you said in the beginning of your cross examination, you understood that the purpose of the report was to get an accurate notion of the experience for any given year in the State of Missouri. You so stated, didn't you?

A. You asked me if that wasn't it, and I agreed with you.

Q. Now, do you think there is anything about these reports that would so confuse an accountant like yourself so that you would think that there ought to be expenses put in there, in getting up the state's experience, with the companies, that were paid exclusively in the other 40—odd states in the Union?

A. I know that confusion actually did occur.

Q. At least, they put them in, didn't they?

A. The confusion put them in, because the people who have put them in told me the reason why they did it.

Q. Now, I see you have on this report "inspection and rating bureau expenses" as a direct expense in the State of Missouri, and then under the allocated column you have got "inspections and surveys, including underwriters' boards and associations." Now, do you think that there [fol. 2423] ought to be an allocation of those expenses?

A. Yes, sir.

Q. Does that——

A. Not the same expenses, no.

Q. Well, isn't it a fact that under those reports that there was some confusion on the part of the company so that they included the term expense, and the entire expense, under item 11, and then allocated it to the State of Missouri?

A. There is no one item in that blank which is more confusing than that one.

Q. Well, now, let's see. You have got what they call an inspection and rating bureau expense in the State of Missouri amounting to a certain sum of money?

A. Yes.

Q. Now, under item 11, under the allocated column, you would include that in inspections and surveys, including underwriters' boards and associations, and then allocate that to the State of Missouri?

A. No, the blank says to deduct it.

Q. But that is not what actually happened, is it?

A. Yes, sir. They deduct it in Missouri but didn't deduct in the other states.

Q. What do you mean by that?

A. Why, the heading of that column calls for "total of all states." The companies followed that literally. They took the total for all states and that inspection and rating bureau item, of that item, and deducted item 5 above directly, as the instructions of the blank called for, and pro rated the balance.

Q. Now, it seems to me then—was this the confusion on [fol. 2424] the part of the companies, that Missouri paid all her inspection and rating bureau expenses as a direct expense and was so charged?

A. Yes.

Q. And then you took the similar expense of the other States of the Union and pro rated Missouri's part to it?

A. Yes.

Q. So Missouri paid her own pro rated portion of the other states'?

A. Yes.

Q. That was the confusion that resulted on that matter?

A. Yes. Some companies deducted Item 5 before they pro rated and some companies deducted it after they pro rated. Either one would be correct under the blank.

Q. By the way, Mr. Hobbs, for the purpose of arriving at a true experience in the State of Missouri in this particular hearing do you think these duplications should be present?

A. No, sir.

Q. They shouldn't be there, should they?

A. No, sir.

Mr. Jacobs: That is all.

Mr. Folonie:

Q. They are not in the figures you submitted here, are they? I mean in the figures that are offered in evidence in this case?

A. They are not. That is the very reason why it was necessary for Mr. Baty to do the work he has done in order to make sure that the figures were absolutely right.

By the Referee:

Q. Mr. Hobbs, can you give me an estimate in your judgment, reasonably accurate, as to what difference there would be in the cost of the investment end of the company's business if done separately and if done in conjunction with the underwriting business?

[fol. 2425] Mr. Folonie: I was going to ask him about that myself and I overlooked my note here. I will ask the court, if you will, to accept this modification: If the investment business were handled by the distinct companies who are now handling it, as distinguished from consolidating it into investment companies of smaller groups.

The Referee: Yes. To be specific, take this:

Q. Assume the facts as they have apparently been developed in evidence here, that the investment business and the underwriting business are handled substantially by the same clerical and executive and administrative forces, and handled in separate groups, according to the company in the one instance. Now, to what extent would that cost of handling the investment business be affected and how would that be affected if the same volume of business were done by men of not necessarily equal but of sufficient capacity to handle the business, and done separately in the same number of groups, wholly disconnected with the underwriting business?

A. Well, I think it would obviously require men of the same capacity and value and salary to handle it separately as it does now, and on that assumption, if it were handled as a separate matter, it would take all of his time and all of his salary then would be charged against the investments and where, if it were handled along with other matters, underwriting or other activities or any other duty one might have, then only a portion of his salary could be

charged against the investments. Then your clerical hire, I don't think the class of clerical hire would necessarily vary. The same class of accountants could handle it under [fol. 2426] one condition as could under the other, but under the condition where it is handled with other matters and it only takes part of a man's time, then, again, the same as with the supervising official, only part of his expense would be chargeable to the investment end.

Q. Looking at the executive department only, we will say, would the underwriting business of the companies, on an average, require the entire time of that executive?

A. I think it would; yes, sir.

Q. In other words, if I understand you, if the two lines of business were wholly disconnected an executive of practically equal capacity would be required to conduct the investment end of the business and another executive of like capacity to conduct the underwriting end of the business, and all of the time of each would be so employed?

A. Yes. Of course, on the assumption that the investment end was such as they could use that man. Of course, they wouldn't have a separate department unless that were true, but assuming that would be necessary to handle that large a sum of money, why, I think your statement is correct.

Q. Would that assumption be correct as applied to most of the companies involved in this action?

A. I would say no, because, while a company might have fifty or eighty million dollars of investments, those investments are not all made in one year; they go over a period of years, and an investment, we will say in the month of January, of $50,000 might require a half an hour's time in that month on that man's part.

[fol. 2427] By Mr. Folonie:

Q. Would investments from year to year, the change in their investments, have comparatively small relation to their total investments and the soundness of the investments which stock fire insurance companies invest their money in is such that it does not require watching such as would be required in a firm doing strictly an investment business, because they would watch the market very closely and would trade in the market regularly?

The Referee: I am assuming the same business to be done whether done in conjunction with the insurance writing or not; handled in the same way.

Mr. Folonie:

Q. If it was necessary, why, the companies the size of the Globe-Rutgers and the Home and the Hartford, the Continental and so forth, would all maintain a separate investment department, but they don't. It would naturally follow that that procedure is not necessary.

The Referee: Now, this suggestion, in view of what you have said: Would there be a material increase in the cost of handling the investment end of the business entirely disconnected from the underwriting end of the business?

A. I believe there would be an appreciable difference. How material it would be is difficult to estimate. Using the same factors in the equation——

The Referee: Certainly.

A. I think it would materially affect it. Whether it would make a charge of 2 per cent on the earned premiums or 5 or only 1½ I am hardly prepared to state, but I think [fol. 2428] it would at least double the ½ of 1 per cent that I referred to.

The Referee: That is all.

Mr. Folonie: Allow me to pursue that inquiry just a little further:

Q. Considering the companies as one, instead of separate units and assuming that you were managing this whole group of stock fire insurance companies as one group or unit, under your supervision, if you were going to make a separation entirely of their underwriting activities and their investment activities, would the greater number of executives be assigned to underwriting or to the investment end of the business, if you were going to separate it into two parts?

A. Oh, the investment department would be very, very small. There would be very few people in it, because two or three executives could handle a large sum of money as easily as they could a small one.

Q. Now, if, instead of the waste that would arise by separating it into two definite bases and having each of the

executives of each company devote, we will say, his entire time to looking after investments which might take only a half an hour or an hour a day, suppose the great bulk of these executives were relieved of the investment end of the business entirely and put all their energies into underwriting, and you selected just enough executives of insurance companies to run this investment end of the business of the group, would you think the amount of money it would take to run the investment end of the business would be any materially greater than the ½ of 1 per cent that you [fol. 2429] have mentioned?

A. I don't think it would as long as you had as large a volume to figure expense against; as related to an individual company it would be different.

Q. If you separated the activities and you were going to put each of these executives into running the business only, he would be idle a great part of his time, would he not?

A. Yes, he would.

Q. If his underwriting activities were entirely out of his hands.

A. He would be.

Q. And if you were going to divide the business to avoid that waste you would put the underwriting activities in the hands of the larger group and the investment activities in the hands of the smaller group of executives, then?

A. Yes.

Q. If you were arranging the whole group of companies, I mean, as a unit.

A. Yes.

By the Referee:

Q. You think, then, considerable savings are made to the companies by uniting the two lines of business under the same executive heads?

A. Yes, sir, as related, of course, to individual companies and not as the illustration.

The Referee: Surely. And do you think, then, that the greater part of the savings thus effected should be credited to the underwriting end or the investment end of the business?

A. Why, the entire savings in this situation would be on the investment end.

Q. Suppose the saving in a given instance, assuming an arbitrary figure, in a given year would amount to, say, [fol. 2430] $50,000; should that sum be allocated, so to speak, to the underwritiag end as against the investment end in whole or in part, and if in part, in what part?

A. Wholly to the investment end.

Q. Why?

A. Because that is the department of the business in which the expense is incurred and there should not be anything charged against the underwriting, and is not on the investment expense now.

Q. I don't think you understand my meaning, quite. Say that as between a situation where the two lines of business would be entirely disconnected, and handled through separate officials, and a condition which actually exists where both lines of business are handled by the same executive, a considerable saving in your judgment is effected by having them handled by the same executive, I think you have said?

A. Yes.

Mr. Folonie: Avoid duplication of executives.

The Referee: Precisely.

Q. Now, then, how should that saving, assuming that in a given year with a given company it amounted to $50,000, how should that saving be considered? As a saving in the underwriting end of the business or in the investment end of the business? To get at a just result?

A. In figuring the total expenses of the company this saving should be deducted from the underwriting expense. Not the saving, of course, but the charge for this should be deducted from the underwriting expense and charged against the investment. Do I get your point correctly?

The Referee: I think so. That is all.

By Mr. Folonie: That is all.

[fol. 2431] By Mr. Jacobs:

Q. These presidents of the various companies have very little to do with the underwriting end of the business, don't they?

A. I wouldn't say that, no.

Q. Well, did you hear them testify in New York?

A. Yes.

Q. Isn't is a fact they testified they had very little to do with the underwriting department of the business?

A. No, I don't remember that.

Q. For example, Mr. Jameson, you don't remember that, do you?

A. I don't remember his testimony.

Q. If he did so testify, that he had little to do with the underwriting end of the business, what part of the business are his activities directed to?

A. I don't know.

Q. Investment end?

A. He would have to testify.

Q. Now, I notice in your reports and in your testimony that you have many investments in stocks and bonds. Do you watch the market and do you buy and sell upon the market?

A. I find that they do not.

Q. What do they do, just stand there and let the stuff go down until there is a big loss, or——

A. The kind of securities that stock fire insurance companies invest in are not subject to violent fluctuations in the market and they are not bought for the purpose of speculation, but for investment.

Q. Isn't it a fact your reports all show enormous losses on investments in stocks?

[fol. 2432] A. No, they show a book fluctuation in total but not a violent fluctuation in detail.

Q. Well, they may have been in total or in detail, but your books show great fluctuations?

A. Yes. If you have an investment of 50 million dollars and your report shows a fluctuation of $500,000, that is $500,000 and to me is a large sum. It may be one half a point on the stock on the investments each one of them had fluctuated.

Q. That is assuming your whole 50 million was in stocks and bonds?

A. I don't care what they were in, whether stocks or bonds, with a volume of that kind it would show a moderate fluctuation in the individual stock or bond.

Q. Do you buy stocks on the market?

A. Why, we have to buy them through the sources in which they are sold.

Q. And that is the market.

A. Some of them, yes.

Q. And they fluctuate up and down on the market, don't they?

A. Yes, most of them.

Q. Do you mean to say these executives of the insurance companies don't pay any attention to the market and keep in constant touch with it and watch that situation and guard against losses on these vast investments?

A. Fluctuations such as occur in the market on the class of securities which they buy wouldn't bother them.

Q. Wouldn't bother them at all?

A. No.

Mr. Jacobs: That is all.

[fol. 2433] By the Referee:

Q. If the investment end of a given company's business, assuming it to be of average size, were being handled by a separate executive and clerical force, large economies would result to that department by consolidating that executive and clerical force with the executive and clerical forces in charge of the underwriting end of the company's business, would they not?

A. Yes, sir.

Q. The cost would be reduced from what ever it might be to what you have estimated as being, I believe, ½ or 1 per cent on the earned premiums?

A. Yes, sir.

Q. And that saving should be considered as having been made by which end of the business?

A. Well, the saving is made on the business as a whole and the expenses of that department, either run separately or with the underwriting, should not be charged against the underwriting. It is a corporation saving which should never be charged, either whether it were saved or not and should not be charged against the underwriting; so that it is a corporation saving in the management of their business as a whole and the credit from it would show in their investment expense report.

Q. In the matter of reduced expenses?

A. Yes, sir.

The Referee: That is all.

By Mr. Folonie:

Q. In other words if they spend money on investment activities you think, in figuring the underwriting expense, it should be deducted from the whole corporate expense, in [fol. 2434] getting at underwriting expense, whatever part of the expense in fact was devoted to the investment end of the business; is that correct?

A. Yes, sir.

Mr. Folonie: That is all.

Mr. Jacobs: Did you do that?

Mr. Folonie: They are not so conducted.

Mr. Jacobs: Under your report and testimony of general disbursements for expenses of your companies have you deducted the expenses of your investment and banking operations?

A. Every item of expense which could be separated in any way has been taken out of the expenses.

Mr. Jacobs: Well, I am asking you whether or not you have deducted from your general disbursements as reported in your tabulated testimony the expense of investment and banking?

A. On the individual blanks reported, no.

Mr. Jacobs: You mean in the tabulations that have been offered in evidence in this hearing?

A. In the tabulations which have been offered in evidence from time to time for the individual companies in making up the expense item, every item which could be in any way segregated from an analysis of their records has been left out, but in those blanks such as items—such items as the salary of the president, who may give some time to the investments of the business, is not deducted.

Mr. Jacobs: How about clerical hire and rent?

A. Such items as cannot be segregated are in those reports.

[fol. 2435] Mr. Jacobs: And how about your reports to the state that you have hitherto made? Are the expenses included in them?

A. Yes.

Mr. Jacobs: That is all.

Mr. Folonie: That is all.

(Witness excused.)

The Referee: Now, gentlemen, what is your further pleasure?

(Discussion ensues.)

The Referee: We will adjourn, then, gentlemen, until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken until 10:00 o'clock the following morning, the same being Friday, the 18th day of January, A. D. 1924, at which time parties again reconvened at the same place, and the following proceedings there had:)

[fol. 2436] Arthur S. Baty, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?
A. Arthur S. Baty.
Q. Where do you live?
A. Oak Park, Illinois.
Q. That is a suburb of Chicago, is it not?
A. Yes, sir.
Q. What is your business?
A. Public accountant.
Q. Do you specialize in any particular form of accounting?
A. Insurance.
Q. What has been your study and experience to prepare yourself for accountancy work and experience since you entered into it?
A. Experience has been a practical experience.
Q. All right; tell us about yourself. When did you start and where and what have you done since and why?
A. I started in the insurance business in 1894 with the old Manhattan Fire Insurance Company in New York City. At that time I had the position of assistant cashier.

The Referee: Mr. Baty, would you mind speaking just a trifle louder?

A. In 1898, 1st of February, I went with the Manchester Assurance Company, of London, which then had a subsidiary company called the American Fire Insurance Com-

pany of New York. There I had the position of bookkeeper. I was afterwards raised to the position of chief [fol. 2437] accountant of the Manchester, and in 1903 I was made its chief accountant. In 1904 the Manchester sold to the Atlas Assurance Company of London. I was continued as chief accountant. I left that position on January 1, 1911, and went out of the insurance business, and was out of it until 1915. During that period I was connected with an educational institution in the mountains of Kentucky.

In 1915, on the 12th of January, I took a position as senior accountant with Joseph Froggatt & Company.

Mr. Folonie:

Q. What was their business?

A. Public accountants. That was my start in the public accountant field.

Q. Did they pay special attention to insurance accounting?

A. Almost entirely.

The Referee: Froggatt, is that the name?

A. Yes, sir. (Witness spells name.)

Mr. Barker: He testified in New York.

The Witness: Yes. In July, 1916, I went into the firm and in September, 1918, I came to Chicago as the manager of the Western Department of Froggatt & Company's office. I remained there until 1921, when I took the position as comptroller of Fred S. James & Company.

Mr. Folonie:

Q. What is their business?

A. They are a large general agency writing all lines of insurance.

In October, 1922, I went into business for myself in the business of public accounting. I have been in that business since.

[fol. 2438] Q. Now, with reference to the accountancy work you did as head accountant for these insurance companies you have mentioned, you worked for, what was the general nature of your work there?

A. Well, in the Manchester and Atlas I had full charge of the accounting department.

Q. Well, what does it comprise and as chief accountant what did you do?

A. It comprised the auditing and verification of the agent's accounts, as to premiums, returned premiums, and reinsurance that passed through the agency accounts. It also has—it includes the supervising of the reinsurance department, which is a part of the accounting department. It supervises the registering of the business; the statistical end of the business, and the financial accounting and general ledger, and final monthly account work.

Q. Does that work include as part of it the making or supervising the making of reports to various state departments in the way of annual reports, tax statements, and things of that kind?

A. Yes, sir.

Q. Does that work come—with companies in general, does that particular kind of work, that is dealing with the state departments by way of filing reports of your transactions and doings, does that come under the accountant's charge?

A. Yes, sir.

Q. In your experience with Froggatt & Company before you entered into business for yourself, what was the nature of the insurance accounting work done by that firm and yourself while with them?

A. They audited monthly accounts, quarterly, monthly, semi-annual or annually, as the case might be. We pre- [fol. 2439] pared annual statements for companies. We took over the work of reorganization of office systems and revisions. The planning out of statistical departments and general reorganization work for insurace companies.

Q. Did you devise a method and means of keeping records and supervision of the keeping of records of companies and installing systems and so on?

A. Yes, sir.

Q. Did any of the work you did at that time, was any of it done in conjunction with insurance departments of states who examine insurance companies for the information of such companies?

A. Mr. Froggatt was, during the latter part of my administration as manager of the western department, he was the chief examiner of the New Jersey Insurance Department, and under his instructions I made some examina-

tions of departments located in the west, along the Pacific Coast, for the New Jersey Department.

Q. You mean you examined departments of the insurance departments for the insurance company——

A. I mean to say I was examining companies having western departments, Pacific Coast departments, for the New Jersey Insurance Department.

Q. Since you have been in business for yourself as an accountant, has your work been largely that of insurance accounting, or has it been general accounting?

A. Principally insurance accounting.

Q. Have you had the supervision, in conjunction with Mr. Hobbs, of the securing of the statements from the various companies as to their premiums, losses, expenses and the [fol. 2440] other statements offered in evidence in this case?

A. Yes, sir.

Q. Excepting for those statements which were mentioned by Mr. Wirth yesterday as having been secured by him, and excepting for those companies whose statements were dispensed with by our agreement here yesterday, were the remaining statements which have been offered in evidence here secured and verified by you?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. Have you made an examination and comparison of the records and publications of the Insurance Department of the State of Missouri to ascertain and verify the fact that these statements combined are the statements of all the stock fire insurance companies doing business in the State of Missouri during the period from 1917 to 1921, including both years?

A. Yes, sir.

Q. And do those statements so produced—and I am now excepting in my questions the companies Mr. Wirth secured and the ones dispensed with by agreement yesterday—do they cover all of the stock fire insurance companies doing business in the State of Missouri?

A. Yes, sir.

Q. And do they cover all of the companies who were in the state for that period, whether for the full period or parts of the period?

A. Yes, sir.

Q. Now, some of these statements, I notice, are not for the complete period. For instance, I notice the World Auxiliary that is before me here now has figures only for the year 1920 and 1921, and a number of the others are in [fol. 2441] the same position. Did you secure from those respective companies whose figures you have secured and so produced in evidence here the figures for the entire term that each of them was doing business in the State of Missouri?

A. Yes, sir.

Q. And are those years that are left blank on some of these companies, are those years that they were not doing business in the State of Missouri?

A. Yes, sir.

Q. That is the reason for leaving those years blank, is it?

A. Yes, sir.

Q. Have you in securing these various statements of premiums, losses, expenses and unearned premiums, verified the statements of those companies from the books and records of those companies?

A. Yes, sir.

Q. And have you by such examination ascertained that those figures as so submitted are true and correct according to their books and records?

A. Yes, sir.

Q. And are they true and correct?

A. Yes, sir.

Q. Have you at my instance and request made various tabulations of these exhibits so in evidence to combine them and to segregate the parts of those statements into groups and groupings so that the experience of the companies in a combined manner might be made to appear here for the benefit of the court?

A. Yes, sir.

Q. Are the papers which I now have before me here which have been previously marked by the reporter, were those prepared by you?

A. Yes, sir.

Q. And the original copies which you made in longhand have been photographically reproduced, have they not?

A. Yes, sir.

[fol. 2442] Q. And these are the photographic reproductions of the papers that you wrote out in longhand?

A. Yes, sir.

Q. You have those original longhand transcriptions here in your possession, have you not?

A. Yes, sir.

Q. Now, first I will display to you Plaintiffs' Exhibit 1353, so marked at the present time for identification, and consisting of three sheets. What is that tabulation?

A. This is the tabulation of the business done by these companies, and arranged in alphabetical order for the year of 1917 on the earned premium business.

Q. And does the list as there contained—I will just call your attention to the World Auxiliary on the top, where the figures were offered yesterday. Are the figures on the World Auxiliary on that list you have there?

A. They are not.

Q. Is there any other that is missing from your list and tabulation?

A. I think not.

Q. And were the figures of the World Auxiliary secured since you made your tabulation?

A. Yes, sir.

Q. That is the reason it is not included in that list, is that correct?

A. Yes, sir.

Q. Now, Mr. Baty, since I call your attention to the fact that yesterday was produced the figures of the Fidelity Union, is that also omitted?

A. It is omitted, yes, sir.

Q. So there are figures of two companies that are here in evidence that are omitted from your tabulation?

A. Yes, sir.

[fol. 2443] Q. If counsel and ourselves do not agree that they may be eliminated from the record, will you, at a later time, add those to the calculations we have here and make the corrections on the face of these exhibits to include them, if we so request you?

A. Yes, sir.

Q. Now, in making your tabulation in the exhibits now before you, Plaintiffs' Exhibit No. 1354, you may state what you have tabulated. You have already stated you put

the companies into alphabetical order and that this covers the year 1917. Now, what did you tabulate?

A. I tabulated the unearned premiums as of December 31, 1916; the net premiums written during 1917, the unearned premium at December 31, 1917, and the earned premiums of 1917; the losses incurred of 1917, the expenses incurred of 1917; the combined losses and expenses incurred of 1917; the investment expense of ½ of 1 per cent on the earned premium was deducted from this latter figure.

Then the incurred losses and expenses free of the investment expense, this producing an excess or deficit before conflagration allowance; excess or deficit is tabulated.

The conflagration allowance of 8 per cent of the earned premium is then tabulated, producing a profit or loss in fact derived, and those are tabulated.

The tabulation is made of the profits properly to be derived 5 per cent of the earned premiums, showing an excess or deficit or amount properly to be derived and compared with the amount in fact derived, producing an excess or de-
[fol. 2444] ficit, which is tabulated. And the ratio of the deficiency of the earned premiums are also tabulated.

The Referee: Read the latter part of that answer, Mr. Blume.

(Answer read by the reporter.)

The Referee: Ratio to what?

A. Earned premiums.

The Referee: Ratio of the deficiency to the earned premiums?

Mr. Folonie:

Q. Deficiency of what and the earned premiums?

A. The deficiency of the profit or loss derived; to be derived, to the earned premium.

Q. In other words, how much the earned premium in fact secured exceeds or falls below the figure which would be necessary to produce the conflagration charge and the 5 per cent profit that you assume?

A. Yes, sir.

Q. Now, have you made a computation company by company so that this complete history or tabulation as we have mentioned appears for each company?

A. Yes, sir.

Q. Have you made a like tabulation, now showing you Plaintiffs' Exhibit No. 1355, for the year 1918 for the companies in question?

A. Yes, sir.

Q. And showing you Plaintiffs' Exhibit No. 1356, is that a like tabulation for the following year, of 1919?

A. Yes, sir.

Q. Showing you Plaintiffs' Exhibit No. 1357, for the year 1920, is that a like tabulation for that year?

A. Yes, sir.

[fol. 2445] Q. And showing you Plaintiffs' Exhibit No. 1358, is that a like tabulation for the year 1921?

A. Yes, sir.

Q. Now, are these tabulations truly and correctly made from the exhibits here in evidence?

A. Yes, sir.

Q. That is, these exhibits that are secured from the companies showing the premiums and the losses and the expenses and the unearned premium figure?

A. Yes, sir.

Mr. Leahy: Which he verified.

Mr. Folonie:

Q. Now, showing you Plaintiffs' Exhibit No. 1359—I wish you would be careful in seeing that I don't misstate what these are as I go along, because I may get confused with the numbers of exhibits we have here—is that a recapitulation now of the preceding exhibits which you have just previously mentioned?

A. Yes, sir.

Q. And does that combine the figures of Plaintiffs' Exhibits 1354, 1355, 1356, 1357 and 1358 into one consolidated group of figures?

A. Yes, sir.

Q. And your divisions as to unearned premiums and written premiums and earned premiums and unearned premiums and so forth which you have recited, the same divisions or subdivisions are retained in this combination recapitulation, are they?

A. Yes, sir.

Q. And is this a true and correct summary of the exhibits immediately preceding?

A. Yes, sir.

Mr. Folonie: We offer in evidence the plaintiffs' exhibits respectively numbered 1354, consisting of three sheets, and marked Exhibit No. 1354, 1354-A, and 1354-B; and Exhibit No. 1355, consisting of three sheets, with number 1356, con-
[fol. 2446] sisting of three sheets, number 1357, consisting of three sheets, and Exhibit number 1358, consisting of three sheets, and Exhibit number 1359, consisting of one sheet.

The Referee: Received.

(Whereupon the documents so offered, being Plaintiffs' Exhibits Nos. 1354 to 1359, both inclusive, were admitted in evidence and are hereto attached and made a part of this record in Volume X-1.)

(Here follow side folio pages 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, and 2462)

[fol. 2463] Mr. Folonie: Now, if the court please, I will take the liberty of reading some of the figures from this recapitulation sheet, which is really the condensed information of the other detailed sheets.

In the first column, "unearned premiums, beginning of period," appears figures year by year followed in the next column by "written premiums" for the year; for instance the year 1917 the unearned premiums of all companies combined of $8,372,804. The written premiums during that year being $11,000,000. I will leave off all the odd figures. The unearned premium at the end of that year, 9 million dollars.

The next column, the earned premiums—I am reading now the fourth column for the year 1917. Earned premiums, $10,696,651. There are no cents in these figures at all. These are all dollars.

Your Honor will recall the formula by which the earned premiums were computed, namely adding the unearned premium of the previous period and then the written premium for the period and then the earned premium at the end de-

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[fol. 2464] ducted, and then the earned premium is the resulting figure; so that these go in sequence, so if it is desired to ascertain the earned premium the three figures which enter into this computation immediately precede it.

The Referee: Now, Mr. Baty—just hold that—do I understand that you have added to the earned premiums here on sheet number—well, to get the total on the first column, in the heading "unearned premiums," to this sum of $8,372,804 you have added the written premiums?

A. Yes, sir.

The Referee: Of $11,879,758?

A. Yes, sir.

The Referee: And you have deducted the unearned premiums at the end of that period, amounting to $9,555,911?

A. Yes, sir.

The Referee: And you thereby obtain the result under the heading of "earned premiums," of $10,696,651?

A. Yes, sir.

The Referee: Very good.

Mr. Folonie:

Q. Now, if the court please, these calculations having been made company by company this formula would not be gone through to get this total here (indicating). It would be simply an addition of those figures as secured by this process, company by company, but you can take these totals and go through that same formula and you will reach exactly that same result. In other words, that proves it out.

If you take unearned premium of one company at the beginning of the period, add this written premium and then deduct the unearned premium at the end, and go through [fol. 2465] that formula for each company, then when you add the totals of the unearned premium at the beginning and of the written of all the companies and then the unearned premium at the end, and then you add the earned premium of each company which you have so derived, you reach this figure by the process of addition; although, by that process of division of those totals, you would reach exactly the same figure.

In other words, this is a sum of those calculations which

could be reached in gross or could be reached company by company.

The Referee: You mean what, now?

Mr. Folonie: This $10,696,651 earned premium figure is the sum of the earned premium of all the companies, but by taking these combined figures and going through the same formula you reach exactly the same earned premium figure of $10,000,000.

I am just explaining that process was not gone through in reaching this figure, but it does reach the same figure—if he had done it on this gross figure.

The next column is "expenses incurred" and the next one "losses incurred." That is $4,500,000 and $7,300,000.

The next column is the combined total of those two preceding figures and is the "incurred losses and expenses," combined, of 11 million dollars.

Now, the investment expense of ½ of 1% on the earned premiums of course is ½ of 1 per cent of the figure in column 4, which is the earned premium figure; and that is then deducted from this—this ½ of 1 per cent figure of $53,000 [fol. 2466] is deducted from the incurred losses and expenses of $11,976,000, reducing it to $11,923,000—so as to eliminate the investment expense from the expense item.

The Referee: Yes.

Mr. Folonie: That then leaves an excess or deficit, company by company, some companies having an excess and some a deficit. The word excess or deficit has been here used to avoid the term profit or loss in an intermediate figure. You or I would call it profit or loss, but you will have another profit or loss figure, and so, to distinguish between them, we have used the words excess or deficit in this instance. In other words, whether the expenses and losses incurred when combined and free of investment expense are greater or less than the earned premiums of a particular company leaves an excess or deficit on that earned premium. In other words, it is more than sufficient to meet losses and expenses or it is insufficient to meet losses and expenses.

Then follows a calculation of the conflagration allowance at the rate of 3 per cent on the earned premium figure. That is 3 per cent on the column 4 again, the earned premium figure, to which we keep relating back in these figures.

Now, that conflagration allowance——

The Referee (interrupting): Pardon me just a moment there, Mr. Folonie. It is apparent that I haven't fully grasped all that has been said here, by the question that now occurs to me. Under the head of "excess or deficit before conflagration allowance" you show under the head of "ex-
[fol. 2467] cess" $240,715, and under the head of "deficit," $1,467,074. I wish you would explain that.

Mr. Folonie: These figures being photographed—you would usually put them in black ink and red ink, but the distinction between the black and the red ink would not show in a photograph. I will make it clear to you by showing you the detail sheets and clarify to you what we are talking about. When you get to the Aetna——

The Referee (interrupting): Now, the total excess of all companies having an excess, $68,167, is the figure shown here, and the total deficit of all companies having a deficit of $340,254, is shown under the head of deficit on sheet number 1?

Mr. Folonie: Yes.

The Referee: I see what you mean precisely.

Mr. Folonie: So that when you get all through adding up those which have excesses and those which have deficits you reach these two columns of figures here (indicating.) To find out how they are made up and what companies have a deficit you have to go back to your detail sheets.

Then the next column, you have "conflagration allowance of 3% of earned premiums," which is a calculation of 3 per cent on the figure in column 4.

Of course, the figure, the very first figure under that of $91,099, under conflagration, is 3 per cent of the earned premiums as they appear on sheet number 1.

The Referee: Yes.

Mr. Folonie: And the next figure under it, $129,000, is 3 per cent of the figure of the earned premiums on sheet num-
[fol. 2468] ber 2; and on sheet 3, and then the total of those three sheets, which is $320,900, that is the total then for the year 1917 of the conflagration charge.

Now, the profit or loss in fact derived, shown under two columns, is the amount which the excess previously—appearing just before the conflagration figures, the excess is reduced or the deficit increased by reason of the 3 per cent

conflagration charges. In other words, you would have that much left to divide among the stockholders as profit or loss; so that you will find the excess is reduced and the deficit is increased by the conflagration figure.

Then in the next, "profit properly to be derived, 5 per cent of earned premiums," that is simply an application of the evidence of witnesses here that 5 per cent is a proper charge, a computation and calculation of what it would amount to on this earned premium figure if it in fact were derived.

Then in the next two columns are the excess or deficit or amount properly to be derived compared with amount in fact derived, which is a comparison of the profit or loss in fact derived, and which you find immediately preceding the "profit properly to be derived" at 5 per cent, the five per cent profit charge. In other words, that excess or deficit is influenced by the comparison with the profit and loss in fact derived compared with what it should be, and what—the balance figure then is the excessive or exorbitant amount derived or the inadequate amount derived to meet these charges.

[fol. 2469] Then it is carried out percentage-wise in the last column by ratio figures, and you will find at the bottom of the sheet, the very last figure in the lower right hand corner, the balance percentage-wise, which is reached—which shows that the deficiency is 17.4 per cent. In other words, it falls that much short of what it would have been had we in fact derived 3 per cent conflagration amount and 5 per cent profit on our earned premiums. We would have derived an amount 17 per cent beyond that which was in fact secured.

The Referee: One minute, please. The 5 per cent profit claimed to be properly derived plus the 3 per cent for conflagration hazard, if considered as constituting 100 per cent, is in fact as shown by the figures here; and the experience of the companies as already represented, in place of being 100 per cent, is reduced by 17/100?

Mr. Folonie: No. If those were eliminated entirely there would be a loss of 9 per cent. If we had no profit and no conflagration charges at all we would have suffered a loss of 9 per cent on the earned premiums. I will show you this a little more clearly later. That is increased from 9 per cent to 17 per cent by reason of having been deprived of

that profit and that conflagration charge, which we think we should have had. Instead of a 9 per cent loss we say it is a 17 per cent loss. It is increased 8 per cent by reason of not having secured those.

The Referee: Very good.

Mr. Hogsett: May I state what is in my mind on that point?

[fol. 2470] In other words, an analysis of these figures leads to this net result: On the earned premium basis the earned premiums fell 9.8 per cent short of paying the incurred losses and the incurred expenses for the five year period. That takes into account nothing whatever for conflagration or profit.

But, on the actual figures, totaling up one side against the other, the earned premiums fell 9.8 per cent short of paying the incurred losses and incurred expenses.

Mr. Barker: What about the actual losses and actual expenses?

Mr. Folonie: Well, we say they are actual.

The Referee: Just a moment. That means, then, that the companies did business at an actual loss of 9.8 per cent?

Mr. Folonie: That is right.

Mr. Hogsett: That is what it means, in the five year period.

The Referee: And does that mean that if the companies had been permitted to make a profit on the basis deemed by the companies a proper one, and had been allowed a conflagration hazard charge of 3 per cent, the difference between what actually occurred and what the companies claim should have occurred would be 17.4 per cent on the earned premium basis?

Mr. Hogsett: Yes, sir, that is what it means.

Mr. Folonie: That is, we would have recouped our 9 per cent loss and had 8 per cent in addition.

Mr. Hogsett: Yes, that is right.

[fol. 2471] Mr. Folonie (addressing the reporter): Now, give this the next number.

(Whereupon the document so referred to was by the reporter at the time duly marked "Plaintiffs' Exhibit No. 1360.")

Mr. Folonie:

Q. Now, showing you Plaintiffs' Exhibit No. 1360, was that prepared by you from the exhibits in this case, Mr. Baty?

A. Yes, sir.

Q. What is 1360?

A. 1360 is a statement of the Missouri Tabulation of Expenses.

Q. Are those expenses analyzed in this statement to show the proportion of expenses which went to the different parts of their expense item?

A. Yes, sir.

Q. For instance, the proportion of their total expenses which went for taxes and the proportion which went for home office expenses, and so on?

A. Yes, sir.

Q. And have you there a total showing the sum year by year and then the combined figure for the five years on these different expense items?

A. Yes, sir.

Q. Have you on this sheet computed the ratio of those expenses year by year separating actual and paid expenses from apportioned expenses, and showing those separately?

A. Yes, sir.

Q. Have you also on this sheet shown the incurred expenses, earned premiums, paid losses, ratio thereof to earned premiums, incurred losses and the ratio thereof, incurred expenses and the ratio thereof, and the profit or loss year by year, and the ratio of profit and loss on the business?

A. Yes, sir.

[fol. 2472] Q. Did you make these computations?

A. Yes, sir.

Q. Yourself?

A. I did.

Q. Are they truly and correctly made?

A. Yes, sir.

Q. From the exhibits in evidence in this case?

A. Yes, sir.

Mr. Folonie: We offer this in evidence, Plaintiffs' Exhibit No. 1360.

Missouri Tabulation Expenses

Year	Loss Adjustments	Agents Commissions	Field Supervision Expense	Actual Paid Expenses State of Missouri: Rents	Furniture & Fixtures	Maps	Inspections & Surveys	Federal Tax on Premiums	All Other Taxes	Miscellaneous
1917	115908	1615838	376000	7807	70	2602	187958	10287	207711	
1918	138807	1928298	407137	8119	755	1789	227826	92683	267582	
1919	145886	2032032	452000	10130	2956	2808	277105	102521	311468	
1920	208706	2800508	550122	11161	3207	2850	241380	196746	419785	
1921	203810	2801360	620686	9807	3278	2925	210990	181387	604877	
Totals	812311	11177862	2406045	47024	9866	12032	1410759	623186	2,190,959	
Ratios to Losses Incurred	12%	24.6%	21%	—	—	—	1.9%	.8%	2.9%	

PLAINTIFF'S EXHIBIT NO. 1860

Premium Taxes	Miscellaneous	Total Paid	Apportioned Expenses Missouri: Head Office Expenses	Federal Income Tax	Miscellaneous	Total Apportioned Expenses	Combined Paid and Apportioned Expenses	Ratio	Incurred Expenses	Ratio	Earned Premiums	Paid Losses	Ratio
7711	38776	3,638,541	934006	15778	8207	958038	4496729	42.0	4,599,417	43.0	4696631	4112316	6
7582	44804	4226578	910190	80982	8792	999964	5227837	41.6	5,311,754	42.3	12552214	9378256	7
6468	59053	7,081,004	1165725	140466	10065	1316256	6347284	40.8	6,522,372	41.9	15574944	6649228	1
6783	64361	6,887,257	1,661,277	228,699	18601	1908575	8577969	48.3	8,614,069	48.5	17785490	9238509	5
6877	64796	6,934,674	1,764,361	73913	14282	1852556	8,161,230	43.9	8,553,799	42.6	19621460	14629129	7
6959	372790	44,453,949	6,835,584	542932	59,997	6,935,487	53,293,149	44.4	53,634,414	44.9	118,813,816	105,738,8	6
2.9%	.6%	35.2%	5.4%	.7%	—	9.2%	44.4%		44.9%			62.9%	

...ces Missouri Miscellaneous	Total Assessments	Combined Paid and Apportioned Expenses	Ratio	Incurred Expenses	Ratio	Earned Premiums	Paid Losses	Ratio	Incurred Losses	Ratio	Profit	Loss	Ratio
8207	858038	4496729	42.0	[illegible]	[illegible]	[illegible]	[illegible]	66.5	7377076	69.0		1279842	12.9
8772	199964	5237837	41.6	[illegible]	[illegible]	[illegible]	[illegible]	74.7	[illegible]	75.5		2229955	17.8
10065	1316076	6347284	41.8	6522372	46.1	[illegible]	[illegible]	46.9	[illegible]	46.9	9824.18		7.6
18601	1985705	8577969	42.3	8614069	42.4	[illegible]	[illegible]	59.9	10906448	61.3		1736224	9.7
19782	1855268	9611344	41.9	8552794	42.6	[illegible]	[illegible]	74.8	[illegible]	72.9		8121721	15.9
29997	4915489	13945149	41.4	23614414	41.9	[illegible]	[illegible]	62.9	[illegible]	64.9	9824.18	8366746	
—	9.2%	41.4%		41.9%			62.9%		64.9%		Less Profit	982.18	
											Net Loss	7383762	9.8

(Whereupon the document so offered, being Plaintiffs' Exhibit No. 1360, was admitted in evidence and is hereto attached and made a part of this record in Volume X-1.)

(Here follows side folio page 2473)

[fol. 2474] Mr. Folonie: Now, I call the court's attention to this expense tabulation, that in the first group are the actual paid expenses; that is, the direct expenses as distinguished from the apportioned expenses.

The Referee: What do you mean by the "group"?

Mr. Folonie: It is captioned at the top.

The Referee: Under the head of "actual paid expenses, State of Missouri"?

Mr. Folonie: Yes.

The Referee: Very good.

Mr. Folonie: And under this you will find "loss adjustments," and the figures under that column appear year by year, and then a total for the period and then underneath that total the ratio, which on loss adjustments is 1.2 per cent. That is the proportion of the—that the loss adjust-[fol. 2475] ment figure bears, is it, Mr. Baty, of the whole expense.

A. Yes, sir.

Q. And then the agents' compensation, which you will notice, 24.6 per cent, that is the largest single item of expense independently.

The Referee: Now, this please: In 1917, under the head of loss adjustments, there is an item of $115,948?

Mr. Folonie: Yes.

The Referee: I understand that to mean the expense of making adjustments for the year 1917 in the State of Missouri?

Mr. Folonie: Of all companies, yes, sir.

The Referee: And the agents' compensation for the same period for all of the companies involved, shown under the head of agents' compensation, is $2,625,338?

Mr. Folonie: That is correct.

The Referee: Proceed.

Mr. Folonie: Then the agents' compensation for the year in question—for the period in question—is $18,420,629, which is 24.6 per cent.

Q. Now, Mr. Baty, is that 24.6 per cent 24.6 per cent of the earned premium, or is that 24.6 per cent of the total expense?

A. It is 24.6 per cent of the earned premiums.

Q. And are all these ratios here of the expenses, the proportion or relation they bear to the earned premium?

A. Yes.

[fol. 2476] Q. You have rents, furniture and fixtures, maps, inspections and surveys, federal tax on premiums, all other taxes—and if you want to get it hurriedly, you will find 2.9 per cent, looking at the bottom of that column. And miscellaneous, and total paid expenses, 35.2 per cent.

Now, if you desire to compare the proportion or relation of the apportioned expenses to the direct expenses you will notice that the total paid direct expense is 35.2 per cent and the total apportioned expense is 9.2 per cent. In other words, the direct expense is practically four times—almost four times that of the apportioned expense.

The Referee: Yes.

Mr. Folonie: Then you have in the next column the combined paid and apportioned expenses, which then gives you the total expense in the state on all classes. That appears there in figures and also percentage-wise at the bottom, and that way it is 44.4 per cent.

The Referee: On the earned premium basis?

Mr. Folonie: Yes.

Then there is the percentage of the incurred expenses, which is 44.9 per cent.

Now, you will note that your combined paid and apportioned expenses of the actual paid—we have had actual paid expenses to this point—is 44.4, and the incurred expenses 44.9 per cent. Now, we have had a good deal of discussion here as to which is the proper basis, whether it should be paid expenses or incurred expenses, and we call Your Honor's attention to how very little discrepancy [fol. 2477] there is over a five year period. It is really only .5 of 1 per cent difference whether you take one basis or the other.

And when you get to the losses, you have those also, paid losses and incurred losses, and you will note that the paid losses are 62.9 per cent, while the incurred losses are 64.9 per cent, showing that the difference between the two bases

is 2 per cent of the earned premium figure over the five year period. So that I think the very wide difference between those two which you might possibly, from this evidence, have thought existed you see simmers down and it isn't as controlling a question as you might at one time perhaps have thought.

Then there is the loss, which you will notice is carried out in the extreme right hand figure, the last figure in the lower right hand corner; 9.8 per cent. Now, that is the loss. But figuring the 5 per cent—without figuring the 5 per cent or 3 per cent at all, that is the loss. You remember those were included in the 17 per cent. Now, here is the loss without figuring theoretically what we should have. On an earned premium basis, as a matter of fact, during the five years we lost 9.8 per cent.

The Referee: Otherwise stated, the companies actually lost by reason of their business operations during the period shown on the document before me—I haven't the number of this exhibit.

Mr. Folonie: 1360.

[fol. 2478] The Referee: Actually lost a sum of money equal to 9.8 per cent of the earned premiums for that period by all of the companies?

Mr. Folonie: That is correct.

The Referee: Very good.

Mr. Folonie:

Q. Mr. Baty, have you prepared a statement, Plaintiffs' Exhibit No. 1361, showing the result of computations by taking the written premiums, paid expenses and paid losses, and making a computation of what the result is by taking that basis of calculation?

A. Yes, sir.

Q. And is this a true and correct calculation upon such erroneous basis?

A. Yes, sir.

Mr. Folonie: We offer it in evidence, if the court please.

Mr. Barker: You have been very careful to show the court your losses, would you tell him what this shows? I am interested. When a lawyer shows something and stops I think it is in my favor. What is the objection to showing him what that is?

Mr. Folonie: We are going to.

Mr. Barker: That's right, tell him. I want to hear it.

Mr. Hogsett: You will hear it in the same detail that you heard the others.

(Whereupon the document so offered, being Plaintiffs' Exhibit No. 1361, was admitted in evidence and is hereto attached and made a part of this record in Volume X-1.)

(Here follows side folio page 2479)

[fol. 2480] Mr. Folonie: Now, this computation, if the court please, we have made upon a basis for which we do not contend, but we have, nevertheless, made the calculation, for the court's convenience. You will note that we have here separated the net premiums written into the classes of fire, hail, tornado and other classes, and then carried out the total, and that is the total of the net premiums written. These figures will correspond with the written premium figures which were on the previous exhibits where we had written premiums, unearned premiums, and so forth. It is the same written premium figures that appear on those sheets, that you could find by comparison.

Next, the net losses paid, shown by classes and by totals. Next appears the loss ratio on a written basis, which is 56.4 per cent for the five years, shown clear at the bottom of the column, under "loss ratio." I am omitting the total year by year and just taking the total.

Next column is expenses paid, $33,103,634, and the expense ratio is 39.6 per cent.

The total losses and expenses combined, 80 million dollars. Now, you will note the total premiums written were $83,560,000, and you will find that in about the sixth column, if you want to consider that comparatively. That combined ratio of losses and expenses is 96 per cent.

The Referee: Yes.

Mr. Folonie: That shows a balance or a profit in that calculation of 4 per cent.

The Referee: Yes.

[fol. 2481] Mr. Folonie: This is, of course, without making any computation of a conflagration charge or any rate

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of profit at all. It is a balancing figure, which shows we had a 4 per cent balance in our favor on this basis of calculation.

The Referee: I understand that this tabulation is made for the purpose of showing the results obtained by pursuing the method of calculation which counsel for plaintiffs say is the theory of counsel for defendant.

Mr. Hogsett: That is right.

Mr. Jacobs: In part. There is a lot left out.

Mr. Hogsett: In other words, it simmers down to 9 per cent loss on the earned premium basis and 4 per cent profit on the other basis.

Mr. Folonie:

Q. Showing you Plaintiff's Exhibit No. 1362, have you on this exhibit made a calculation, Mr. Baty, of the effect of the 10 per cent reduction order of the defendant if applied to fire, lightning, hail and tornado classes only? In other words, if the 10 per cent reduction order were applied to the business in fact done during the five years, 1917 to 1921, inclusive, and adopting the basis of net premiums written, losses paid and expenses paid, have you made a calculation of the result of so doing?

A. Yes, sir.

Q. Is that a true and correct calculation?

A. It is.

Mr. Folonie: We offer it in evidence as Plaintiffs' Exhibit No. 1362.

(Whereupon the document so offered, being Plaintiffs' Exhibit No. 1362, was admitted in evidence and is hereto [fol. 2482] attached and made a part of this record in Volume X-1.)

(Here follows side folio page 2483)

[fol. 2484] Mr. Folonie: Now, if the court please, you will see this is year by year and separated into classes, and the order which is being reviewed here is not an order of 10 per cent reduction on *all* business, but on fire, lightning, hail and tornado. Here are the fire premiums of $64,718,499. Here is the figure reduced ten per cent. Here

is the hail figure reduced ten per cent, the tornado figure reduced ten per cent; and the other classes remain the same.

The Referee: What do they include?

Mr. Folonie: Everything except the ones he reduced the rates on. You will note that figure is just the same.

The Referee: The classes included in the "other classes" were not included in the reduction order?

Mr. Folonie: No.

Mr. Jacobs: But your loss ratio in those other classes is the same, too, isn't it?

Mr. Folonie: I haven't gotten to that.

Here is your total, then, which you see was 83 million dollars, and then is the reduced figure of 75 million dollars, and this 75 million dollars figure is the total of these four (indicating); three of them reduced and one remaining as it was.

Then here are the net losses paid, which are 37 million as to the fire, which are carried down to the profit and loss, applying 10 per cent reduction, are carried down to [fol. 2485] the same figure each because obviously the claimant would get just as much money whether he wrote a policy for a dollar or a hundred dollar figure.

Your Honor will note that the loss ratio changes from 56 per cent to 62 per cent. In other words, the losses are identically the same but the figure to which they relate, namely the premium figure, changes, so that changes the ratio. When the expenses are paid—I think I will ask Mr. Baty about it instead of telling you, because it doesn't appear on the sheet.

Q. Mr. Baty, in the calculation on Plaintiffs' Exhibit No. 1362, in considering the effect of the rate reduction order of ten per cent if applied, did you make a reduction in the expense item in carrying it down under the proposed application of the ten per cent reduction order?

A. Yes, sir.

Q. What expense items did you make a reduction of?

A. Commissions, taxes, inspections and surveys.

Q. And what percentage did you reduce those items?

A. Ten per cent.

Q. Yes. In other words, the agents' commissions are paid upon the premiums?

A. Yes, sir.

Q. And if the premium is less then naturally the agents' commission would be less, is that correct?

A. Yes, sir.

Q. And taxes are based on the amount of your income and therefore they would be proportionately reduced, would they?

A. Yes, sir.

Q. And the same is true of the bureau you mention?

A. Yes, sir.

[fol. 2486] Q. Now, the other expense such as loss adjustment expense and items of that kind, they would not be affected at all by the amount of the premium receipts?

A. No, sir.

Q. So that you reduced, in other words, those parts of the expense where the expense would be affected by a reduction of the premium income?

A. Yes, sir.

Q. And left the others unaffected?

A. Yes, sir.

Mr. Folonie: I thought it proper to ask the witness instead of explaining, because it doesn't appear on the sheet.

Now, that reduced your expense item of 33 million to 32 million. Your expense ratio changes for two reasons, first because your expenses have changed, and also, next, your premium figure to which it applies is changed, and that changes from 39 to 42 per cent. Your total losses and expenses now are 79 million, with 75 million dollars of premiums, where before you had 83 million dollars premiums and 80 million dollars of losses and expenses; so that, instead of a 4 per cent profit you now have 4.6 per cent loss.

Q. In other words, Mr. Raty, you say—to summarize this last calculation, Plaintiffs' Exhibit 1362, do I correctly interpret the sheet to mean on your calculation that a profit or a balance in favor of the companies of 4 per cent existing before the application of the ten per cent rate reduc-[fol. 2487] tion order would be changed to a deficit of 4.6 per cent if the rate reduction order were applied?

A. Yes, sir.

Q. That is, on a basis of written premiums, paid losses and paid expenses?

A. Yes, sir.

The Referee: And that last-named theory, namely, written premiums, paid losses and paid expenses, is the defendant's contention as stated by counsel for plaintiffs?

Mr. Folonie: That is correct.

Mr. Jacobs: With the exception that it is not a complete statement.

Mr. Folonie: Well, it is our conception of their basis, if the court please. I will readily concede that when you are undertaking to state the position of an opponent you rarely state it to his satisfaction, but we have attempted to formulate it on their theory as we understood it and that is as far as we claimed to go.

The Referee: I merely wanted to get that in; not necessarily, of course, as stating the whole of the defendant's contention, but merely as identifying this sheet and for the purpose of showing what the plaintiffs intend to show by this sheet.

Mr. Folonie: Quite so.

The Referee: We will take a ten minute recess now, gentlemen.

(Which was accordingly done.)

Mr. Folonie:

Q. Mr. Baty, I show you Plaintiffs' Exhibit 1363, consisting of three sheets, 1364, consisting of three sheets, 1365, consisting of three sheets, and 1366, consisting of three [fol. 2488] sheets, and 1367, consisting of three sheets. What are those?

A. This is a tabulation of the company's figures on the written basis by years.

Q. Comprise what elements and items?

A. Net premiums written for fire, hail, tornado, other classes, and total. Net losses paid for fire, hail, tornado and other classes, and total. The loss ratio and total for the year. Expenses paid and the expense ratio; the total

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losses and expenses combined. The combined ratio showing the trade balance or profit and loss.

Q. The term "trade profit" as that term is used means the written and paid basis as distinguished from the earned and incurred basis, does it?

A. Trade balance; yes, sir.

Q. And is this detail in these sheets set out company by company?

A. Yes, sir.

The Referee: Read the previous question, Mr. Blume, please.

(Record read as directed.)

Mr. Folonie: That is, you corrected my term there, "profit," to read "balance," is that it?

A. Yes, sir.

Mr. Folonie: These sheets, if the court please, are virtually the detail of the recapitulation sheets on the basis I have already offered, and show the details from which that sheet is made up. We offer them in evidence.

The Referee: These in substance are the data from which the recapitulation sheets previously offered were derived? [fol. 2489] Mr. Folonie: That is correct.

(Whereupon the documents so offered, being Plaintiffs' Exhibits Nos. 1363 to 1367, both inclusive, were admitted in evidence and are hereto attached and made a part of this record in Volume X-1.)

(Here follow side folio pages 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, and 2504.)

[fol. 2505] Mr. Folonie: Now, if the court please, we have had photographic reproductions made of these various exhibits here except this last group, which we have not had time to have photographed, and we are subject to the direction of the court. We would like to reproduce them, to have copies for ourselves and also for our opponents, as well as having one for the record. They might be reproduced under the direction of Mr. Terry, as a means by which the reproductions can be made without expense. We

would prefer that, merely from the standpoint of saving expense.

Mr. Barker: We have no objection to it.

The Referee: Mr. Terry may then reproduce them and they may then be filed.

Mr. Folonie: I am purposely putting this into the record so it will show the taking of the exhibits by Mr. Terry is by the consent of the court.

The Witness: May I make an explanation there?

Mr. Folonie: Yes.

The Witness: The ratio of losses, expenses and combined ratios are not put on these sheets by companies. I have them on the rough sheets but we didn't have time to get them in here. I am mentioning that so that if you want [fol. 2506] these by ratios I will have them put on in my office.

Mr. Folonie:

Q. In other words, you have the figure and you have the ratios of years and in total but not company by company, is that correct?

A. Yes.

Q. Although the figures are done company by company, the ratios of the expenses, for example, to the premiums are not down company by company on the sheets, is that what you mean?

A. Yes, sir.

Q. But you have them on your work sheets?

A. Yes, sir, but we didn't have time to get them on here.

The Referee: They should be shown on these sheets with little effort.

The Witness: Just take a little time to put them on; probably a day or so.

The Referee: That would be time well spent, wouldn't it?

Mr. Folonie: I think so. It would save our opponents work and we have them already working.

Mr. Barker: All right.

The Referee: By consent of counsel, then, these documents may be withdrawn for that purpose. Is that right, General?

Mr. Barker: Yes, sir.

Mr. Folonie: And the documents then will be altered after their admission but before their reproduction—will be altered by inserting those ratios on the face of them.

[fol. 2507] The Referee: And not otherwise.

Mr. Folonie: Yes. That is all.

Cross-examination by Mr. Barker:

Q. Mr. Baty, you were directed by the insurance companies to prepare the data which you have submitted, I assume?

A. I was employed by Mr. Hobbs.

Q. Well, am I correct in stating that you were working for the insurance companies?

A. I am working for Mr. Hobbs.

Q. Well, who in the world is Hobbs?

A. He is the assistant manager of the Western Actuarial Bureau.

Q. Well, you were not employed by the State of Missouri?

A. No, sir.

Q. You were performing this work for the insurance companies?

A. Through Mr. Hobbs.

Q. And you prepared your tabulations for the purpose of showing to the court the underwriting activities of the insurance companies?

A. Not necessarily the underwriting activities.

Q. What did you show besides the underwriting activities?

A. I didn't do the—I showed the tabulation of the results of the business.

Q. Well, were you trying to arrive at the underwriting profit or loss, whichever it might be?

A. Yes, sir.

Q. Then your efforts were directed towards determining whether or not there was an underwriting profit or an underwriting loss of the companies?

A. Yes, sir.

[fol. 2508] Q. Now, you were not requested to ascertain whether or not there had been an earning of the corpora-

tion, but rather whether there had been an underwriting profit or loss?

A. Yes, sir.

Q. Now, if you were trying to arrive at the earnings of a corporation necessarily you would consider all of its activities, wouldn't you, Mr. Baty?

A. Yes, sir.

Q. Now, take in a railroad litigation, if you wanted to ascertain whether a two cent fare, passenger fare, was reasonable or not you would simply take the matter from the investment and the cost of doing the passenger business and you would exclude, of course, the freight business and other kinds of business in arriving at your conclusion, would you?

A. Yes, sir.

Q. However, if you wanted to learn the earnings of a railroad you would take all of its activities, including its freight and passenger and all other departments, would you?

A. I would have to first find out what the profit was on the volume of business done.

Q. Yes, but I mean if you were going to figure the earnings of the corporation—railroad corporation—you would take all of its activities?

A. Yes.

Q. Now, you haven't attempted to figure the earnings of these corporations, have you?

A. No, sir.

Q. Now, it's an easy matter, would be for you, to figure the earnings of each of these corporations, wouldn't it?

A. Yes.

[fol. 2569] Q. Having arrived at the earnings, you could apportion it to the State of Missouri in a very simple manner?

A. Yes.

Q. But you don't know what that result would show?

A. No.

Q. Now, you were for several years associated with Mr. Joseph Froggatt?

A. Yes, sir.

Q. He testified in this hearing as the chief accountant of the insurance companies in this investigation?

A. I don't think so.

Q. At one time. When did you cease your connection with Mr. Froggatt, I have forgotten?

A. 1st of November, 1921.

Q. Did you not, or do you know of Mr. Froggatt being indicted in Omaha for falsifying insurance records?

A. I do.

Q. And testifying with reference thereto?

Mr. Folonie: We object. Don't answer. We object to interrogating him as to the supposed default and mischaracter of some other witness, or passing upon or attempting to impeach some other witness in a collateral matter.

Mr. Leahy: And you can't impeach him by showing he was indicted.

Mr. Barker: Let me have a chance when you get through on that.

In a criminal case, of course, as Mr. Leahy suggests, you can only show a conviction. Under the laws of Missouri in a civil case you may show anything tending to discredit a witness, tending to his humiliation, his shame, and spe-[fol. 2510] cific acts of indictment, arrest, and matters of that kind, in a civil suit; this being a civil suit, this witness is entirely competent to testify as to the matters referred to with reference to Mr. Froggatt; in a criminal case, no.

Mr. Leahy: That is not the rule in a civil case any more than in a criminal case. I am surprised that an attorney general should make such a statement.

Mr. Barker: I am not surprised at Mr. Leahy, because he doesn't know any better.

The Referee: Just a moment, gentlemen; generating more heat than light. Objection sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Leahy: Move that part of his question be stricken out.

The Referee: Subject to the production of authorities which may show I am wrong, in which event of course I will change the ruling, the objection is sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker: We offer to prove by this witness that Joseph Froggatt, who testified as a witness in this case, a very material one, was indicted at Omaha, Nebraska, for falsifying insurance records and testifying falsely regarding those records and that the matter is still pending.

[fol. 2511] Mr. Hogsett: To which we object for the reason it is wholly incompetent and immaterial to any proper method of impeaching or attempting to impeach a witness, there being no presumption whatever of guilt prior to conviction.

Mr. Folonie: And not a proper method of proof in any event.

The Referee: So far as I am at present advised, the objection should be sustained and is sustained.

Mr. Barker: Note an exception.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Now, Mr. Baty, in making your calculations here of course you accepted from the books of the companies what those books show that they expended?

A. Yes, sir.

Q. You made no personal investigation as to the reasonableness or unreasonableness of those expenses?

A. Yes, I did.

Q. Well, what investigation did you make?

A. I investigated the taxes paid according to the cash records, and any other expenses that might be paid relative to the Missouri business.

Q. Then did you investigate the premiums paid to the agents in the City of St. Louis?

A. No, sir.

Q. Then you did not investigate the reasonableness of those expense items?

A. Had no occasion to.

Q. That is what I mean. You simply accepted them, whether they were reasonable or unreasonable?

A. I accepted them according to their records.

[fol. 2512] Q. That is what I say. And the losses paid or incurred you accepted in the same way?

A. Yes, sir.

Q. And as to the reasonableness or unreasonableness of the losses paid or incurred or the expenses paid or incurred you have no information?

A. No, sir.

Q. It would be an easy matter for the insurance companies to submit in detail their expenses, would it not, Mr. Baty?

A. They could.

Q. Are you familiar with the commissions that are paid in the City of St. Louis as different from the commissions paid in other parts of Missouri?

A. To some extent.

Q. You recognize that there is a difference in the payment of commissions in St. Louis and other parts of Missouri?

A. St. Louis is an excepted city.

Q. Yes, excepted by who?

A. Well, I couldn't answer the question. That is an underwriting matter.

Q. The Missouri Insurance Department didn't except it, did it?

A. I don't know.

Q. Could the insurance companies declare Moberly an excepted city and pay any sort of a commission there they desired?

A. I couldn't answer the question.

Q. Well, you know they could, don't you?

A. No, I don't.

Q. All right. Now, then, Mr. Baty, from the figures which you found in the insurance companies' offices, the way which you have studied them, you tabulated them and arrived at your conclusions here?

A. Yes, sir.

[fol. 2513] Q. Mr. Baty, on your tabulations at the end of the period I believe the unearned premiums will total in excess of 17 million dollars. Do you remember that, or do you care to look at it?

A. (Referring to exhibit.) 17 million dollars, that is right.

Q. That is your unearned premium at the end of the period of '21?

A. Yes, sir.

Q. Now, at the beginning of your period, '17, your unearned premiums were a trifle in excess of 8 million dollars?

A. Yes, sir.

Q. Now, at the end of the period you deduct your unearned premiums of 17 million dollars?

A. Yes, sir.

Q. At the beginning of the period you gave us credit for the figure of 8 million dollars?

A. I add that to the written premiums.

Q. That is right. Now, the difference, then, at the end of the period, in deducting 17 million dollars in unearned premiums and adding at the beginning of the period 8 million dollars in unearned premiums makes a difference of $8,688,405?

A. Yes, sir.

Q. Now, on that 8 million odd dollars all expenses have been paid?

A. Yes, sir.

Q. What is that?

A. Yes.

Q. Those—at the beginning of the period you gave us credit for the expenses paid on 8 million dollars' worth of business and at the end you charged us with the expenses paid on 17 million dollars' worth of business, which will be earned in the future?

A. Yes, sir.

[fol. 2514] Q. And that is a proper way of charging that, is it?

A. Yes, sir.

Q. Yet on an ascending scale——

By the Referee:

Q. Just a moment. Mr. Baty, can you think of any other method which will arrive at a more equitable result?

A. There is only one other method and that is to keep a record of the earned premiums by each policy written.

Q. Suppose you took this difference and apportioned it on the averages over a five year period, would that tend to produce a more nearly accurate result?

A. I don't think so.

Q. Why not?

A. This method of determining the earned premium is one which is considered by all insurance accountants as being practically correct to obtain the results required. You are charging in—you are adding your unearned premium to the premiums written in order to get the total of the unearned premium at the beginning of the period and the premiums written. From that you deduct your unearned premium at the end of the period, which would show the correct amount of earned premium without going to the expense and the necessary trouble of keeping that record by policies written.

Q. Now, that suggestion, Mr. Baty: If a company's business throughout the entire five year period remained on exactly the same basis in all respects as it showed at the beginning of the five year period, then, the method adopted would be absolutely correct, would it not?

A. It would be accurate.

[fol. 2515] Q. If the companies are doing business on an ascending scale of business the result of this method is not entirely accurate, is it?

A. It would not be so interpreted as being absolutely accurate.

Q. Well, is it in fact so?

A. I can't answer your question except by saying that it is—produces practically the correct result.

Q. If the companies during that period were operating on a descending scale of business that fact would tend somewhat to the prejudice of the companies for the purpose or purposes which are here in view, would it not?

A. Yes, sir.

Q. And if they are doing business on an ascending scale of business it would tend somewhat to the benefit of the companies involved, would it not?

A. Yes, but you have got to take into consideration that the item which you deduct at the end of the period is the item that is used at the beginning of the next period, so that there would be no chance of pyramiding.

Q. It is the same class of item but it is not the same item, because the amounts vary; that is true, isn't it?

A. No, sir.

Q. But you don't start with the same amount, Mr. Baty.

A. With the same amount. If I were starting to add to this statement here the earned premiums for 1921—'22——

Q. Oh, yes, as to a subsequent period, but I am speaking of the same period.

A. The same period.

Q. Of course, you don't deduct the same amount. There would be no necessity of either adding or deducting if you [fol. 2516] deducted the same amount.

A. No.

The Referee: Go ahead, gentlemen.

By Mr. Barker:

Q. Now, you didn't find that any of these insurance companies had set aside any sum for conflagration hazard, did you, Mr. Baty?

A. No, sir.

Q. That is a matter which they can do or not do as they see fit, I take it?

A. It is not done by them.

Q. But it could be done, I say, if they wanted to?

A. Yes.

Q. Now, is a conflagration hazard figured on earned premiums or written premiums?

A. Conflagration hazard is figured on earned premiums.

Q. Now calling your attention to the Missouri tabulated expenses, plaintiffs' Exhibit No. 1360, now, in addition to the actual expenses charged to Missouri there is what you called an apportioned expense to Missouri?

A. Yes, sir.

Q. Now, what does that apportioned expense consist of?

A. An apportioned expense consists of such items as salaries of auditors, directors and employes, rents, maps, postage, other items that apply specifically to head office expenses. Money expended for such expenses at the head office.

Q. In fact, Mr. Baty, it consists of every expense of every kind by the insurance companies throughout the entire United States?

A. Except the expense that is actually paid in a specific state.

Q. For instance, agents' commissions throughout the United States, one of the expenses known as national ex-

[fol. 2517] pense, is apportioned along with everything else to Missouri?

A. No, sir; not on these statements.

Q. Have you anything here to show in any of these statements just what is or is not apportioned, so that I may look at them?

A. I don't know that I have anything right here at the moment. That could be easily determined if you have got a copy of the Missouri annual statement. I will tell you the items that are in that expense.

Q. Well, could you tell from the Missouri annual statement whether or not you apportioned the agency expense at San Francisco?

A. No items of the agency expense such as agency compensation of San Francisco office are apportioned in the Missouri expense here.

Q. Well, where do you show that they are not or that they are?

A. Well, I don't know that I show that any place, excepting that they were figured out from the annual statements in each company's case, and the items that I have enumerated were the items that were taken.

Q. Well, now, at the end of the year it is determined by the home office that their total expenses in the United States amount to a certain sum?

A. Yes, sir.

Q. Now, then, to Missouri is apportioned a part of that total sum, in accordance with the business produced by Missouri?

A. Of certain items; yes, sir.

Q. I asked you a moment ago about every item—is every item apportioned?

A. No, sir.

[fol. 2518] Q. What is not apportioned?

A. Commissions are not apportioned to Missouri, agency allowances are not apportioned to Missouri, and adjustment expenses are not apportioned to Missouri.

Q. Well, suppose there is a state agent operating for the Aetna Insurance Company in California?

A. That is not apportioned to Missouri. It is only the field supervisory expense on the former part of that statement as a paid expense in the State of Missouri and in-

cludes only the state agents and state representatives in the State of Missouri. There is no part of the item of field supervisory expense for any part of the country outside of the State of Missouri in this statement.

Q. For instance, you say "head office expenses" are apportioned to Missouri?

A. Yes, sir.

Q. Now, if the president of the company or any other officer of the company transacted business in San Francisco looking over a conflagration or visiting the agencies, that would be apportioned to Missouri?

A. Surely.

Q. Now, then, the federal income tax paid throughout the United States is apportioned to Missouri?

A. Yes, sir.

Q. And your figures which you have submitted here are submitted on the theory that you—that Missouri should pay its apportioned part of the federal taxes throughout the United States?

A. Yes, sir.

Q. And if it should be determined that Missouri should not pay her portion of those taxes then of course your figures would not be accurate?

[fol. 2519] Mr. Hogsett: Object to that as calling for a conclusion.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: Read the question now, please.

(Question read by the reporter.)

A. I don't think it could be so determined.

Mr. Barker:

Q. Well, but on that assumption your figures of course then would not reflect the true condition?

A. On the assumption, no, sir.

Q. Then you apportion what you call miscellaneous expenses to Missouri?

A. Yes, sir.

Q. Is there any way the state can tell what you mean by miscellaneous expenses?

A. Yes, sir. They are all enumerated on the annual statement blanks.

Q. The annual statement blank enumerates the expenses known as miscellaneous expenses?

A. Yes, sir.

Q. Well, what are miscellaneous expenses?

A. Such items as auditing fees, miscellaneous office expenses, towel service, ice service, water service, lead pencils and ink; may include several different items.

Q. Can you think of any more?

A. I don't think it is really necessary to think of any more. They are really all enumerated on the annual statement blank from which I got the figures.

Q. It will show towels on your annual statement blank?

A. Yes.

Q. And ice?

A. Yes, sir.

[fol. 2520] And lead pencils?

A. Yes.

Q. As furnished to the Missouri Department?

A. No, not as furnished to the Missouri Department; just to the companies.

Q. I thought you told me these miscellaneous expenses would appear on the Missouri blank.

A. So they will, for all of the companies, with very, very few exceptions enumerate what their miscellaneous expenses are on that annual statement.

Q. Then I correctly understood you to say that the towel expense would show on the Missouri statement?

A. Yes, sir.

Q. And the lead pencil expense?

A. Probably.

Q. Well, you say they will show there?

A. Well, I tell you that is all enumerated, all of that miscellaneous expense, right on the annual statement.

The Referee: Do you mean specifically, by name?

A. Yes, sir.

The Referee: So much for towels and so much for ice?

A. Yes, sir. Many of them put in one item and then

attach to the statement the memorandum typewritten showing what those expenses were.

Mr. Folonie: You are talking about records in the defendant's office now are you?

A. Yes, sir.

Mr. Folonie: All right.

Mr. Barker:

Q. Now, I notice that in 1921 on your Exhibit 1360 there was charged to Missouri in the way of apportioned expenses $1,855,655.

A. No, $1,855,686.

[fol. 2521] Q. And you get those items from the head office expense item, federal income tax item, and the miscellaneous item?

A. Yes, sir.

Q. Now, what is included under the heading which is apportioned to Missouri of federal income taxes?

A. Federal income taxes, excess profit taxes, federal capital stock tax.

Q. Is the premium tax included in there?

A. No, sir.

Q. Is there any place where the premium tax is apportioned to Missouri?

A. It is the actual paid expense. This federal premium income tax here—all federal premium tax, I should say.

Q. Now, you have one item, federal tax on premiums. Now, is the federal tax premiums still in vogue?

A. No, sir.

Q. Was it in vogue in 1921?

A. Yes, sir.

Q. And every year during this period?

A. Very few months in 1917 it was not in vogue.

Q. And your tax items and your expenses include the heading, federal income taxes and federal taxes on premiums?

A. Yes, sir.

Q. That is as far as federal taxes go?

A. That is as far as federal taxes go.

Q. And that includes every form, you told me, of federal taxes?

A. Yes, sir.

Q. Now, all other taxes, the items under that head include what?

A. State taxes on premiums, insurance department license and fees, fire department taxes.

[fol. 2522] Q. Now, are those taxes paid in other states apportioned to Missouri?

A. No, sir.

Q. And the only charge is for the taxes paid in Missouri?

A. Yes, sir.

Q. But all federal taxes are apportioned to Missouri?

A. Yes, sir; with the exception of that federal premium tax, which is figured on the actual premiums in the State of Missouri, taxes paid on that.

The Referee: On what basis do you compute the apportionment as to other items?

A. It is usually kept separate on the records of the company.

The Referee: But on what basis do you apportion it or do you derive the figure which shall be apportioned to the State of Missouri?

A. What percentage the Missouri net premiums bear to the total premiums of the company.

The Referee: The total net premiums?

A. Yes, sir.

Mr. Folonie: Of that same company?

A. Of that same company.

The Referee: Is the same method pursued with reference to all other states?

A. Yes, sir.

Mr. Barker:

Q. Now, Mr. Baty, after each year has expired the companies have a total expense throughout the United States which they assume?

A. Yes, sir.

Q. And that includes every kind of expense incident to their business?

A. Yes.

Q. In all of their activities?

A. Yes, sir.

[fol. 2523] Q. Now, then, the apportionment is made to

the states on the volume of business each state produces, as figured against the total expense of the companies?

A. Yes, sir.

Q. And insurance companies, like other corporations, have many activities, do they?

A. Yes.

Q. And one activity is writing insurance business, paying losses in case there are losses, and the expenses incident thereto?

A. Yes.

Q. Another activity is in looking after the money which they receive from the policyholders, which is known as unearned premiums?

A. Yes, sir.

Q. Another activity is investing the capital and surplus?

A. Yes.

Q. And also investing the unearned premiums?

A. Investing the funds that they may have on hand at any time.

Q. Including all of the items I have spoken of?

A. I wouldn't say that they were any specific items or liabilities that belonged in that class that you mention.

Q. Well, you mean, then, that they invest all of their assets which they have on hand, leaving sufficient to carry on their business?

A. Yes, sir.

Q. Now, the unearned premium belongs, the way you figure your tabulations, to who?

A. Belongs to the company.

Q. The insured may receive his part back by cancellation?

A. Yes, sir.

Q. And in case of loss it is used to pay losses?

A. No, sir.

[fol. 2524] Q. No part of an unearned premium is ever used for the payment of losses?

A. Except it might be a very severe conflagration where funds had to be used.

Q. But it is available for losses if needed?

A. I wouldn't say, yes.

Q. To that extent it is an asset of the corporation?

A. No, it is a liability.

Q. If it is available for the payment of losses isn't it to that extent an asset, for that purpose?

A. No, sir, it is a liability. You can't construe unearned premium to be anything but a liability.

Q. Then can you charge a liability—can you use a liability which you have in your possession for the purpose of paying a loss?

A. You might be able to use it in an extreme case like the Frisco conflagration, for immediate use.

Q. Well, if it belongs to the company, as you have stated, how do you figure it is a liability?

A. Because it may be called for at any time by any of the assured or all of the assured, for the return of the unearned portion of their premium.

Q. Now, then, Mr. Baty, you figure the item here of ½ of 1 per cent, do you?

A. Yes, sir.

Q. It has been referred to several times in these hearings and in the published documents as ⅛ of 1 per cent?

A. No, sir.

Q. Which is the usual form?

A. No, sir.

Mr. Folonie: What do you mean by "no, sir?" Your answer is not strictly responsive, Mr. Baty; your answer was not responsive to his question. You said "no, sir," [fol. 2525] which I don't think is clear. Read the question.

(Question read by the reporter.)

A. ⅛ of 1 per cent referred to, so far in this hearing, has been ⅛ of 1 per cent of the mean invested assets; has nothing to do with the earned premiums.

The Referee: Referring to the uearned premiums, Mr. Baty, these premiums are not kept in any separate fund by the companies, are they?

A. No, sir.

The Referee: Portions of the fund so derived may be invested or not, as the case may be?

A. Yes, sir.

The Referee: In other words, to use a phrase heretofore used, it all goes into one pot?

A. Yes, sir.

The Referee: And is used for whatever purpose the company has occasion to use money?

A. That is correct.

The Referee: Proceed gentlemen.

Mr. Barker:

Q. Now, as an insurance accountant, you know the underwriting activities and experiences of the companies for many years, do you, Mr. Baty?

A. Generally, yes, sir.

Q. Take any period, ten or twenty years prior to this date, have the insurance companies earned as much as one per cent underwriting profit, according to the method which you use in figuring underwriting profit?

A. Over a period of ten or twenty years?

Q. Yes, sir.

A. I would say no.

[fol. 2526] Q. Then during a period of ten or twenty years on the method of calculation which you use the insurance companies have not earned one per cent underwriting profit?

Mr. Folonie: Per annum, do you mean, or for that whole period?

Mr. Barker: Either way he wants it.

Mr. Folonie: It makes a big difference.

A. For the whole period I would say that they have not earned more than one per cent, if that.

Mr. Folonie: One per cent for twenty years or one per cent per annum for twenty years?

A. Twenty years.

Mr. Barker:

Q. How much do you think, as an expert witness, they should earn on their underwriting activities?

A. My opinion, if I may express it that way, would be that they should earn ten per cent.

Q. And yet during this period of either ten of twenty years the stockholders have uniformily in these corporations received large returns, have they not?

A. On the capital invested, yes, sir.

Q. Do you think a stockholder in a corporation should receive a return upon anything other than his investment?

A. No.

Q. Then on a one per cent underwriting profit the companies have been fairly profitable in settling with their stockholders?

A. Well, I don't know that that is correctly stated.

Q. You don't know that that is correctly stated?

A. No, sir.

[fol. 2527] The Referee: What is the correct statement of it, Mr. Baty?

A. The figures upon the face of the dividends declared to stockholders—that is what you are getting at——

Mr. Barker: Yes.

A. Might show very large returns, for instance ten or twenty or thirty or forty per cent on the capital stock; but, over a period of years, taking into consideration all of the contributions that the stockholders have made to the surplus, and considering also the years that the stockholders received no dividends, their investment has hardly paid them more than about four per cent.

Q. Now, have you any figures showing in the last twenty years the return to stockholders?

A. I haven't them here.

Q. You haven't them here?

A. No.

Q. They are published in all the financial—in all the official insurance manuals?

A. Yes, sir..

Q. Mr. Best is an insurance authority, is he not, Mr. Baty?

A. I am not prepared to answer that question.

Q. He publishes works and books on insurance?

A. Yes, sir.

Q. His tabulations are usually correct, are they?

A. I wouldn't say that they were always correct.

Q. Have you observed errors in his tabulations?

A. Yes, sir.

Q. Minor ones or material ones?

A. I don't recall, now; some time ago.

[fol. 2528] Q. But his tabulations and the result of his tabulations are accepted in the insurance world, are they not?

A. They are the reports rendered to him by the insurance companies.

Q. And therefore accurate?

A. Supposed to be.

Q. Now, I notice in your exhibit, Plaintiffs' Exhibit 1362, the Missouri tabulation showing the effect of the ten per cent reduction order, that you refer to fire, hail and tornado insurance and then under an item, "other classes"—what are those other classes?

A. Automobile business, marine, parcel post and such classes not otherwise enumerated on that statement.

Q. Now, the company or companies in doing business, in some if not all instances, do all of these kinds of business, including those which you have named?

A. Yes.

Q. And of course they receive an income from these other classes of business and have their expense and loss ratio?

A. Yes.

Q. And in figuring the total expenses of the companies you include what expenses they have for handling this "other classes" business?

A. Yes.

Q. And you figure the income which they receive from this "other classes" business?

A. Yes.

Q. Now, the automobile insurance business, collision, theft, and so forth, there is a higher commission paid to the agents for that, is there not, Mr. Baty?

A. I am not prepared to answer that.

Q. It is known as rather a hazardous business as compared with fire?

A. It is known as rather a hazardous business as com- [fol. 2529] pared with fire? I am not prepared to answer that. That is an underwriting question, pure and simple, and I am an accountant.

Q. Haven't you been engaged in the insurance business in your younger days?

A. Yes.

Q. Did you observe then that—or were there any automobile insurance companies in those days?

A. There wasn't any.

Q. Well, they had the inland and the marine business in those days?

A. Yes.

Mr. Fo[illegible]e: Ships had been invented. I object to assuming he was [illegible] before ships were made.

Mr. Barker:

Q. And as to whether or not the other classes business is as profitable or less profitable than the regular business of fire, hail and tornado you don't know?

A. No.

By the Referee: Before we adjourn, I want to ask Mr. Baty a question or two with reference to the dividend proposition discussed a few moments ago.

Q. Do you think, Mr. Baty, that the amounts which stockholders may have contributed in the form of what are frequently called assessments on stock should properly be taken into consideration in determining the rate of profit which the companies might properly derive in their business?

A. Not in the profits of the companies, no, sir.

Q. Well, in the dividends to the stockholders should they be taken into consideration?

A. I don't know that I quite follow you.

[fol. 2530] Q. Should the fact that individual stockholders may in times past have contributed, say 100 per cent of their stock investment to the funds of the company, in order to enable the company to continue in business, be taken into consideration in determining the rate which the company should charge in its underwriting activities?

A. No, sir.

Q. Should it be taken into consideration in determining what is a fair return to the stockholder on his investment?

A. I think it should.

Q. Then where there have been numerous such losses, the effect of taking that into consideration would be, of course, to increase the return to the stockholder?

A. Excepting years where they didn't receive any dividend.

Q. Taking it over a period of time.

A. Taking it over a period of time, the total investment of the stockholder, you would have to include the amount contributed, surplus, and the dividends that he had received, as far as the individual stockholder is concerned, would be figured on his total investment to what he had received in dividends.

Q. Do you think that factor should enter into a computation of the rate which the company might charge for its underwriting activities?

A. No, sir.

The Referee: That is all. Adjourn to two o'clock gentlemen?

Mr. Folonie: Just a question or two.

Q. Mr. Baty, in your judgment does the fact that the stockholders may have paid $500 a share for each share [fol. 2531] of stock held by them or that they got their stock for nothing, does either question affect at all the proper rate to be charged to policyholders?

A. No, sir.

Mr. Folonie: All right.

By Mr. Barker:

Q. Now, in arriving at a rate, Mr. Baty, and in considering Mr. Folonie's question, you must know, of course, the amount of losses, must you not?

A. Yes.

Q. And you must know the expenses?

A. Yes, sir.

Q. And the expenses of course must be a reasonable expense?

A. Yes.

Q. And the losses must be a reasonable loss?

A. That is uncontrollable.

Q. Well, is it uncontrollable? If a man has a building worth $5,000 and you should insure it for $10,000 and had to pay $10,000 in case of loss, isn't that controllable?

A. It is controllable to the extent of the proper investigation and inspection of its worth.

Q. And over-insurance of course would enter into the question of the reasonableness of the rate?

A. I don't know that I know what you mean by over-insurance.

Q. Take a house that was worth $5,000 insured for $10,000 and a loss occurs, and the company would pay $10,000; that would be over-insurance, wouldn't it?

A. I think that is in a very small minority of cases.

Mr. Folonie: *Mr. Folonie*, there is a valued policy law in the State of Missouri, for your information. I don't know whether you know it or not.

[fol. 2532] The Witness: I beg your pardon?

Mr. Folonie: There is a valued policy law in the State of Missouri. I don't know whether you knew that or not.

The Witness: I have understood that there is a valued law, but that is a matter of underwriting and does not come into the scope of accounting.

Mr. Barker:

Q. But in fixing the rate the losses and expenses of course would have to be reasonable or you couldn't get a fair rate, could you?

A. In fixing a rate I would say that that was also an underwriting matter which does not come under the supervision nor the attention of the accountant at all.

Q. And you wouldn't know whether or not losses and expenses would have to be reasonable in figuring a rate; but if you were figuring a rate you would take them just as they gave them to you and figure a rate to give you a profit on that condition?

A. I don't know that I could figure a rate.

Mr. Barker: Very well, then; that's all.

The Referee: Anything further, gentlemen?

Redirect examination by Mr. Folonie:

Q. Mr. Baty, in the preparing of these tabulations that have been introduced in evidence here, did you eliminate from those statements in the expense items all items of investment expense where they were capable of segregation and separation?

A. Yes, sir.

Q. And I suppose that you recognize that there would be a small amount of inseparable matter which at least

[fol. 2533] theoretically should be charged to investments, such as a president spending part of his time in buying investment securities?

A. Yes.

Q. And of course that you didn't undertake to segregate, except as you have set up this ½ of 1 per cent there?

A. No, sir.

Q. Now, I will ask you if you have a certain quantity of written premiums during the period and you set out or segregate and determine the amount of those premiums which are unearned premiums, what is the remainder of those premiums?

A. Earned.

Q. If your business is on a rapidly ascending scale, do your earned premiums go up as well as your unearned premiums?

A. Yes, sir.

Q. In other words, the whole premium goes up, and therefore each of its parts increases?

A. Yes, sir.

Q. I wish you would read to the court for his information the written premiums—just the totals—for each year for the five years here in question.

A. The written premiums for each of the five years?

Q. Yes, the written premiums for each of the five years and then the unearned premium at the end of each of those five years, and the earned premium of each of those five years, and I will ask the court to note the relation between those various figures.

A. Written premiums, 1917, $11,879,758.

Q. Leave off the hundreds.

A. 1918, $13,609,000; 1919, $16,172,000; 1920, $21,895,000; 1921, $19,945,000.

[fol. 2534] Q. Those figures run—leaving off everything but the millions, 11 million, 13 million, 16 million, 21 million and 19 million for those five years—written premiums?

A. Yes, sir.

Q. So there was an increase each year except the last year, when there was a very small decrease; is that right?

A. Yes, sir.

Q. Now read the unearned premiums for each of those five years.

A. 1917, $9,555,000; 1918, $10,612,000; 1919, $12,628,000; 1920, $16,737,000; 1921, $17,061,000.

Q. So there was an increase each of those years in the unearned premiums?

A. Yes.

Q. Now, take the earned premiums.

A. 1917, $10,696,000; 1918, $12,553,000; 1919, $14,156,000; 1920, $17,785,000; 1921, $19,621,000.

Q. So those increased each year. Now, give us the difference between the written premiums in 1917—just in the millions, I mean—1917 to 1921.

A. 1917 is 11 million; 1921 is 19 million.

Q. 19,900,000—almost twenty. There you have got about 10 million, almost 10 million dollars increase, haven't you?

A. Yes, sir.

Q. Now, take your unearned premium.

A. 1917 is 9 million and 1921 is 17 million.

Q. That is 8 million dollars increase.

A. Yes, sir.

Q. In round figures.

A. Yes.

Q. Now, your earned premiums.

A. 1917, 10 million, and 1921, 19 million.

[fol. 2535] Q. An increase of 9 million there.

A. Yes.

Mr. Folonie: That is all with this witness.

Mr. Barker: That is all.

Mr. Hogsett: What about these two odd companies, the Auxiliary and the other one?

The Referee: What company are you inquiring about?

Mr. Hogsett: The Auxiliary World and the Fidelity Union.

The Referee: Mr. Jacobs, may those companies be eliminated?

Mr. Jacobs: I think so.

(Witness excused.)

Mr. Jacobs: Does that conclude your testimony, now?

Mr. Folonie: Yes, the plaintiffs rest.

(Whereupon the further hearing of this cause was continued to the 20th day of February, 1924, to reconvene at

that time at the office of the referee, #818 Scarritt Building, in the City of Kansas City, County of Jackson, and State of Missouri.)

(Pursuant to adjournment hereinbefore noted, parties reconvened at the offices of the referee, #818 Scarritt Building, Kansas City, Jackson County, Missouri, on the 20th day of February, 1924, at which time, on the application of defendant, the further hearing of said cause was continued to the 4th day of March, 1924, to reconvene at that time at the same place.)

(Pursuant to adjournment hereinbefore noted, parties reconvened at the offices of the referee, #818 Scarritt [fol. 2536] Building, Kansas City, Jackson County, Missouri, on the 4th day of March, 1924, at which time, on the application of defendant, the further hearing of said cause was continued to the 24th day of March, 1924, to reconvene at that time at the same place.)

(Pursuant to adjournment hereinbefore noted, parties reconvened at the offices of the referee, No. 818 Scarritt Building, Kansas City, Jackson County, Missouri, on the 24th day of March, 1924, at which time, on the application of defendant, the further hearing of said cause was continued to the 5th day of May, 1924, to reconvene at that time at the same place.)

(Pursuant to adjournment hereinbefore noted, parties reconvened at the Kansas City Club, Kansas City, Jackson County, Missouri, Monday, May 5, 1924, at 10:00 o'clock a. m., and the following proceedings were had:)

The Referee: Gentlemen, we are ready to proceed?
Mr. Barker: Yes, Your Honor.

E. G. McGee, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Barker:

Q. What is your name?
A. E. G. McGee.
Q. Where do you live, Mr. McGee?
A Jefferson City, Missouri.

Q. What is your business?

A. I am with the Insurance Department of the State of Missouri.

[fol. 2537] The Referee: Talk a little louder, please, so we can all hear you.

Mr. Barker:

Q. In what capacity?

A. Special examiner.

Mr. Folonie: Give me the spelling of your surname, please.

A. M-c-G-e-e.

Mr. Barker:

Q. How long have you been connected with the Insurance Department of Missouri?

A. A little over eleven years.

Q. Have you been there during the entire administration of Commissioner Hyde?

A. Yes, sir.

Q. And Commissioner Hardy before him?

A. Yes.

Q. And Commissioner Revell?

A. Yes, sir.

Q. And Commissioner Chorn?

A. Yes, sir.

Q. What other commissioners?

A. That is all, in the time I have been there.

Q. During the time that you have been connected with the Insurance Department of Missouri, what attention if any have you paid to the fire insurance business?

A. Well, ever since the rating law has been in effect in Missouri I have had to check those reports and that has brought me in pretty close contact with it all the way through.

Q. That was in 1915, I believe?

A. Yes.

Q. During those years have you had occasion to tabulate and check and investigate the returns as filed by the fire stock companies with the department?

A. Yes, sir, every year except this year.

[fol. 2538] Q. The fire stock companies since the rating law in 1915 file a report with your department—or how many reports do they file each year?

A. Well, they file, first their annual statements. They file of course a tax return, a report of premiums and losses in the cities of St. Louis, Kansas City and St. Joe, and what we term a report of underwriting experience by classes, which is a report filed under this rating law.

Q. Do you have charge of those reports?

A. Which ones do you mean, General?

Q. All or any of them?

A. Well, I have had not a great deal to do with the annual statements, except in tabulating figures from them. The others, the report of underwriting experience by classes, has come to me each year for checking up and tabulating.

Q. And for verification?

A. Yes, sir, so far as possible.

Q. What is the annual statement which they file?

A. Well, that is a statement of the general business, one page devoted to the state business, showing the general condition of the company and the business written in the entire United States.

Q. What is the tax statement?

A. The tax statement is the yearly Missouri report showing the net premiums upon which they pay a premium tax.

Q. What is the underwriting report by classes?

A. That is supposed to show the premiums, losses and expenses—that is, premiums received, losses paid and expenses paid; and also interest earnings on capital and surplus and on unearned premium.

[fol. 2539] Q. The underwriting report covers the underwriting activities of the company?

A. Yes, sir.

Q. And are those reports sworn to?

A. Yes, sir.

Q. By whom?

A. By the president and secretary, I think, of the companies.

Q. Are they a report which your department uses in figuring the profit or loss of fire companies in Missouri?

A. Yes, sir.

Q. Is that the only report available for that purpose which they file?

A. Yes, and the only report that is intended specifically for that purpose.

Mr. Folonie: I move to strike that out, "intended for that purpose," of course, as a conclusion.

The Witness: It is not a conclusion; it is specified in the statute.

Mr. Folonie: Move to strike out both answers now.

Mr. Leahy: And the argument.

The Referee: Sustained.

(To which action and ruling of the referee the defendant by his counsel then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. What does the underwriting report show with reference to the underwriting activities of the companies in the state?

A. It shows the net premiums received in the state, losses paid in the state, the expenses as paid direct in Missouri and as apportioned.

Q. Is it the only report in your department from which you can figure the underwriting activities of the companies in the state?

A. Yes, sir.

[fol. 2540] Q. You testified in the insurance case of State ex rel. Insurance Companies v. Hardy, involving the surtax in Missouri?

A. Yes, sir.

Q. Are you the witness McGee referred to by the Supreme Court as having testified in that case?

A. Yes, sir.

Q. Now, Mr. McGee, have you had occasion to check and go through the underwriting reports filed with the Insurance Department for the years 1917, '18, '19, '20 and '21, the years under investigation?

A. Yes, sir.

Q. Have you had occasion to observe and to check the figures offered by the insurance companies in this lawsuit?

A. I have observed them and made an effort to check them, yes.

Q. Check them as best you could?

A. Yes, sir.

Q. Now, Mr. McGee, I call your attention to some of the ratios used by these companies in giving their method of computation. Will you inform the commissioner what condition, if any, exists in the sworn reports filed with your department and the testimony offered in this case?

Mr. Folonie: We object to that, if the court please, because such reports are not in evidence and it is a comparison between things in evidence and those not in evidence, and therefore incompetent and to that extent gives or purports to give the contents of instruments not offered, the reports being the best evidence.

Mr. Leahy: Not competent.

The Referee: I think that objection should be sustained, General.

[fol. 2541] (To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

The Witness: Just a moment, gentlemen. These are the figures which the companies have filed in this suit. They are not figures from a report.

Mr. Barker: Yes. Well, we will cover that, either way. I don't care to discuss that at this time. I think we will get that in another way, then, and I will withdraw that question.

Q. Now, then, Mr. McGee, have you had occasion to examine the ratios as used by these companies in the testimony which they have offered in this case?

A. Yes, sir.

Q. Please give the court the result of the investigation and your comparisons of the same.

Mr. Folonie: Comparisons with what?

Mr. Barker: With his figures which he has checked.

Mr. Leahy: Figures from what?

Mr. Barker: Show it to him, Mr. McGee.

Mr. Folonie: I was just trying to understand what he was attempting to make calculations on, whether the figures in evidence, which we think would be proper, or an attempt to make them on something else.

The Witness: As an explanation, let me say these figures are comparisons between the figures here and figures which you submitted in this case in your exhibits there.

[fol. 2542] Mr. Hogsett: Between what two sets of figures, Mr. McGee?

The Witness: Those that I have here are from the exhibit of unearned premium reserve.

Mr. Hogsett: Obtained from what source?

The Witness: Exhibits that you filed in this suit.

Mr. Hogsett: All right, that is one set of figures. What else?

The Witness: The other is the premium and loss exhibit you filed in this same suit.

Mr. Hogsett: In other words, you are talking about ratios as applied to figures in evidence only?

The Witness: Yes, sir.

Mr. Hogsett: All right. There is no objection to that.

The Witness: They are ratios used in arriving at the unearned premium reserve for Missouri.

Mr. Barker:

Q. Just go ahead and make your statement now.

A. In all the blanks which were submitted by the companies' attorneys they made the request here that the company give the method of computing the unearned premium reserve for Missouri. Only about nine or ten companies gave that method. Six or seven of them, I think, their method and figures are correct. Take the Commonwealth Insurance Company, which gives its method here, the ratios used are wrong; for the reason that they use incorrect figures for the Missouri premium. The premiums which they report and swear to as being correct for Missouri premiums for 1917 are $65,726.

[fol. 2543] Mr. Folonie: What year is that?

A. 1917.

Mr. Folonie: Yes. Go ahead.

A. The figures that he uses for obtaining his ratio here are $33,057. In 1918, the correct premiums are $60,798, and the premiums used for obtaining this ratio are $41,026. In 1919, the correct premiums are $32,615; the ones used in this ratio are $33,130. In 1920, the correct premiums were

$54,554, and the figures used here are $48,457. In 1921, the correct figures were $40,309 and the figures used here are $31,845. This, of course, gives an incorrect ratio and a calculation of the unearned premium reserve is necessarily incorrect. The Law, Union and Rock was in Missouri for only two years of this five year period, 1920 and '21. Their method of calculation is correct, but they use as Missouri premiums in 1920, $22,323, whereas the correct Missouri premiums were $24,212. In 1921, they used $27,669, and the correct premiums were $34,208; which makes their ratios wrong and the unearned premium reserve wrong.

The Referee:

Q. Does that make the ratio too high or too low?
A. The ratio is too high.
Mr. Leahy: How much?

A. Well, I haven't figured that, but you see the correct premiums in both instances are higher than the ones used, which would necessarily make the ratio used smaller than the——

Mr. Leahy (interrupting): Same proportionate increase in each?

[fol. 2544] A. No, sir. The North British & Mercantile Insurance Company, Limited, is the same as the others. They have used a wrong Missouri premium in making their calculations.

Mr. Leahy: That is a mere conclusion, we submit, Your Honor. He might submit wherein they are wrong.

The Referee: I think Mr. McGee is qualified as an expert and may express his opinion.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness (continuing): In 1917 the correct premiums were $222,369, whereas the figures used here are $136,015. In 1918, the correct figures were $166,427, whereas the figures used here were $127,594. In 1919 the correct figures were $105,267; figures used here, $103,000. 1920, the correct figures were $193,445; figures used here, $151,868. 1921, the correct figures were $150,438, figures used here $118,-

688; which necessarily makes the ratios incorrect. There were eleven companies which gave their method of arriving at that unearned premium reserve. Three of them are a trifle over twenty-five per cent—are incorrect. The others, we haven't the method, but in trying to check these reserves along the lines of the methods given here, there are considerable discrepancies shown in the reserves, so that it would seem almost conclusive that there must have been some of the same errors in these where the methods are not given that show where the method was given.

[fol. 2545] Mr. Hogsett: We move to strike out the statement of the witness to the effect that it would seem almost conclusive that there is error in these other reports as a conclusion.

The Referee: Sustained.

(To which action and ruling of the referee, defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. What errors do you find in the other reports on the same basis?

A. Well, the American Insurance Company of Newark, they report unearned premium reserve for 1917, $152,691. We make it $195,504.

Mr. Folonie: What was that, please?

A. $195,504. In 1918, they report $128,913. We make it $164,986.

Mr. Folonie: When you say, Mr. McGee, "it," you are still speaking of figures in evidence?

A. The calculations made here in the department were made from the figures that you have put in evidence; yes, sir.

Mr. Folonie: All right; just so as not to have a misunderstanding, and if you will pardon me for interrupting; and so I won't have to go back and perhaps move to strike out at a later time.

The Witness (continuing): In 1919 they reported $134,277. Department figure, $188,063. In 1920, they reported $168,685. Department figures $229,475. In 1921 $200,276.

Department figure, $274,612. Assurance Company of Amer-
[fol. 2546] ica do not give any unearned premium reserve for 1916, and it is impossible to get a correct earned premium for 1917 without that figure. In 1917, they report unearned premium reserve of $7,104; department figures, $9,387. In 1918 they reported $8,276; department figures, $11,435. In 1919, they reported $15,804; department figure, $21,676. In 1920, they reported $22,075; department figure, $31,079. In 1921, they reported $9,702; department figure, $13,528. Automobile Insurance Company of Hartford, Connecticut, in 1917 reported $53,622; department figures, $35,-804.

Mr. Folonie: Is that the earned or unearned now, please?

A. This is the unearned premium reserve. In 1918 they reported $89,950; department figures, $68,541. In 1919 they reported $146,205; department figure, $117,331. In 1920 they reported $252,513; department figures, $239,147. In 1921 they reported $205,814; department figures, $181,-993. Camden Fire Insurance Association, in 1917 reports $31,909; department figures, $33,182.

Mr. Folonie: What do you mean by department figures? You have used that term several times.

A. I have been using it clear through because I made it clear to you that they were the calculation made by us in the department from these reserves.

Mr. Folonie: From the exhibits here in evidence?

A. Yes, sir.

Mr. Folonie: And made by you or under your immediate direction?

[fol. 2547] A. Yes, sir; following the methods given here by the companies who did give their method.

Mr. Folonie: All right.

The Referee. Q. Pardon me. You in these calculations have used the methods shown by the companies, used the figures shown by the companies and reached different results?

A. Yes, sir.

Mr. Folonie: So I understood him.

The Witness (continuing): In 1918 they report $41,301; department figures, $49,181. In 1919 they report $77,598; department figures, $73,253. In 1920 they report $77,174;

department figures, $66,848. In 1921 they report $71,481; department figures, $71,481. That is the first time they get alike. I will just say there are some cents on all these, but I am leaving them off; they don't cut any figure. Citizens Insurance Company of Missouri: In 1917 they reported $48,477; the department figures, $40,943. In 1918 they reported $54,332; department figures, $45,572. In 1919 they reported $57,046; department figures, $53,174. In 1920 they reported $66,997; department figures, $58,774. In 1921, they reported $63,622; department figures, $107,921. The City of New York Insurance Company in 1917 report $18,139; department figures, $26,907. 1918, they report $15,789; department figures, $24,737. 1919, they report $16,778; department figures, $29,152. In 1920, they reported $9,063; department figures, $31,723. In 1921, they reported $20,755; department figures, $36,923.

Mr. Hogsett: General, have you extra copies of that?

[fol. 2548] Mr. Barker: No, I don't intend to introduce those and only marked it because the reporter and referee asked us to do so. This is the tabulations made from your own figures, and he has a right to testify from it.

Mr. Hogsett: Well, you recall we furnished you extra copies of everything.

Mr. Barker: This was only just isolated memoranda on your exhibits. We will carry it through so you won't need it.

Mr. Folonie: That is what we expected.

Mr. Barker: You don't only just think it, you know it.

The Witness: The Concordia Fire Insurance Company of Milwaukee: In 1917 they reported $63,240; department figures, $55,089. 1918, they reported $69,921; department figures, $62,290. 1919, they reported $79,035; department figures, $76,678. 1920, they reported $101,880; department figures, $125,046. 1921, they reported $109,767; department figures, $113,076. The Continental Insurance Company of New York: In 1917, they reported $323,446; department figures, $415,118. In 1918, they reported $382,917; department figures, $449,756. 1919, they reported $438,405; department figures, $513,977. 1920, they reported $568,434; department figures, $636,469; 1921, they reported $606,068; department figures, $691,116. Dubuque Fire & Marine Insurance Company is entirely different from any of the

others. As has been stated time and again that the figures furnished by the companies in this suit corresponded with [fol. 2549] the annual statements and with the tax return of companies. That is not true of the Dubuque Fire & Marine. In this suit they show premiums for 1917 of $51,508; the amount of net premiums on which they paid taxes was $63,591. In 1918, they report $59,129. Net amount on which they paid taxes, $72,617.62. In 1919, they reported $82,500 and the net amount on which they paid taxes was $82,500. In 1920, they reported $68,548, and the net amount on which they paid taxes was $99,853. In 1921, they reported $57,920; the net amount upon which they paid taxes was $82,715; necessarily, using the figures they report makes their ratios incorrect, like those first ones that I gave.

Mr. Folonie: Move to strike that out.

Mr. Barker: He is competent to testify to that.

Mr. Folonie: In this testimony he differs with that which he has recited as to any other companies. In this he has made comparisons with their tax statement to the state and we object to his conclusion as to which—whether their testimony in this case or their tax statement is correct; and his effort to give verity to the tax statement by using the ratios, by saying the ratios are necessarily correct. The tax statement is the best evidence, and is not in evidence in this case.

Mr. Barker: I want to interrogate the witness on that.

Mr. Folonie: Then the court will reserve his ruling while counsel interrogates him further?

The Referee: Yes.

[fol. 2550] Mr. Barker:

Q. Mr. McGee, the records referred to as the tax statement, the annual statement, and the underwriting report by classes are filed with the Insurance Department at Jefferson City?

A. Yes, sir.

Q. They are, under the law, required to remain in the office?

A. Yes, sir.

Q. They are a part of the records of the state?

A. Yes, sir.

Q. And cannot be taken from the office?

A. Should not be, and can be only very temporarily.

Q. Now, then, I think it has been said that there are substantially 160 or 165 companies involved in this suit. Right?

A. Originally I think about 160.

Q. Now, each of the 160 companies would file a tax report?

A. Yes, sir.

Q. What kind of a document is that, how many pages does it have and how large is it?

A. It has four pages about fifteen by eighteen or twenty inches.

Q. Take the annual statement, what kind of a document is that?

A. It is nearly the same size as the tax schedule, perhaps a little larger. As to thickness—well, I can't undertake to say how many pages there is; varies too much, because of the schedules.

Q. Take the underwriting report by classes, what kind of a document is that?

A. That is a single sheet; some of the blanks used were comparatively small. The blank in use the last two or three years is a blank about a third larger than the tax schedule.

Q. You have taken the figures as testified to in this lawsuit and compared them with the sworn reports as filed by [fol. 2551] the same insurance companies with your department?

A. Yes, sir.

Q. And your testimony is a result of that comparison?

A. Yes, sir.

Mr. Barker: Now, we insist, Your Honor, that that is competent.

Mr. Folonie: We renew our objection. The witness has stated that, in substance, that as far as comparisons with tax statements are concerned that he found no discrepancy except as to one company, the Dubuque Fire & Marine, and our motion is to strike out his conclusions as to——

Mr. Barker (interrupting): No, you haven't stated that.

Mr. Folonie (continuing): As attempting to draw a conclusion as to the correctness or incorrectness of that state-

ment, not produced in evidence, and that the ratios as given on the testimony of the complainant are incorrect, as based on that comparison.

The Referee: That narrows the issue to a single document relating to a single company?

Mr. Folonie: Yes, if the court please.

The Referee: What is the size of that document, Mr. McGee?

A. About fifteen by eighteen, approximately.

The Referee: One sheet?

A. Four pages.

The Referee: A copy of it could be made in a little time, I assume?

A. Wouldn't take a great while.

[fol. 2552] The Referee: I see no reason why a copy of that document should not be filed and offered in evidence.

Mr. Barker: Now, we will dispose of the other question, because we are going into that, as to the introduction of all the documents in the record. We want to avoid that, because it would make a record that I am afraid the Supreme Court wouldn't look at, because Your Honor will understand there are thousands and thousands of figures on each page—printed matter, as big as this whole table here, the entire documents, and couldn't possibly be put in the record; and we understand the rule to be——

The Referee (interrupting): Ask the question, General, and then we will have an issue.

Mr. Folonie: Well, the court, by inference, ruled——

The Referee (interrupting): I am reserving the ruling on the whole thing until further developments. General Barker may now ask a question getting at the whole thing in issue.

Mr. Barker: Yes, I wish you would do that.

Q. Now, Mr. McGee, you have stated that you have tabulated and investigated the figures as offered by these companies in this lawsuit; that you have also compared those tabulations and figures with the sworn reports filed for the respective years in the insurance—or with the Insurance Department at Jefferson City and which are now lodged by law in the office of the Superintendent of Insurance.

A. Yes, sir.

[fol. 2553] Q. I will ask you to give the court the difference if any, which exists between the sworn reports filed with your office and the testimony as offered in this case.

Mr. Folonie: Now, if the court please, I think we should like to interrogate the witness briefly on our part when counsel has finished his line as to those documents, their character, condition and existence, a little in detail, if the court will permit at this time.

The Referee: Are you through with your qualifying questions, General?

Mr. Barker: Yes.

The Referee: Proceed then, Mr. Folonie.

By Mr. Folonie:

Q. Mr. McGee, are the tax statements of all of the companies complainant to this suit covering the period from 1917 to 1921, inclusive, all in the files in your office?

A. No, sir.

Q. I mean are all of those which were filed by those companies during that period on file in your office?

A. No, sir.

The Referee: Your answer is "Yes, sir"?

The Witness: No, sir.

The Referee: No, sir.

Mr. Folonie:

Q. What has happened to those which are gone, if you know?

A. I don't know, but I will just say that since we moved into the present capitol we have moved around and rearranged and stored away in vaults down in the basement until we have lost track of a part of those tax schedules. I have hunted for them but I haven't been able to locate them.

[fol. 2554] Q. Are you able to say that you have them complete as to number for any one of the five years, 1917 to 1921, inclusive?

A. For the last two years, 1920 and 1921, we have. The other three years I think we have not.

Q. How many of the 1917 tax statements do you have that were filed during that year?

A. None.

Q. How many do you have covering the year 1918?

A. None.

Q. How many covering the year 1919?

A. None.

Q. And have you them complete for the year 1920?

A. Yes, sir.

Q. And complete for the year 1921?

A. Yes, sir.

Q. That relates to tax statements?

A. Yes, sir.

Q. Now, the underwriting experience by classes statements, do you have those for all of the respective complainants who filed them during the years—I mean underwriting statements, for the year 1917, do you have them for all the companies who filed during that year?

A. We have them complete.

Q. And for each of the succeeding years?

A. Yes, sir.

Q. And the annual statement blank, so-called, do you have those complete for each company for each year?

A. Yes, sir.

Q. Now, the tax statements, all that you do have in your possession for the years 1920 and '21, you will recall that concerning one of them that was produced in Chicago at [fol. 2555] our hearing there the witness stated there had been some alterations made from the time that it left your possession. Are there any changes to the figures as originally filed on any of these tax statements in your possession?

A. Yes, sir.

Q. Is there any means on your part of knowing which figures originally appeared thereon when submitted by the companies and what changes were made before filing and which ones were made after filing?

A. Yes, sir.

Q. What is your means of knowing that?

A. All department figures are made in pencil and the others are made in ink, and no trouble to tell which is which.

Q. And in making your comparisons have you used the ink figures or the pencil figures on those statements?

A. In this particular case of the Dubuque Fire & Marine I have used the pencil figures for the reason——

Q. (Interrupting.) Never mind the reasons, please, at the present time.

A. The reason is very material.

Mr. Folonie: Well——

Mr. Barker (interrupting): We insist that he be permitted to answer.

Mr. Folonie: No, I insist on it in my own way.

The Referee: Objection is sustained.

(To which ruling and action of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

The Witness: That means I shall answer the question? [fol. 2556] The Referee: That you shall not answer the question.

Mr. Folonie:

Q. Have you used the pencil figures as respecting any companies other than the Dubuque Fire & Marine in making your comparisons?

A. No, sir.

Q. And you have used the ink figures in each case?

A. Yes, sir.

Q. And are the figures as appear in the underwriting statements in any case changed?

A. There are notations made on them; yes, sir.

Q. And that appears particularly as to the expense figures on those statements, does it not?

A. Yes, sir.

Q. Were any of those figures changed in or by your department after they were originally filed?

A. A good many of them; yes, sir.

Q. And in making your comparisons have you used the figures as were originally filed or the same as so altered?

A. I have used them the same as originally filed.

Q. And ignored the changes that you had made on them in pencil?

A. Although many of the changes were authorized by the company.

Q. But you have used the original ink figures?

A. Yes, sir.

Q. Now you wish to make an explanation about the Dubuque Fire & Marine of some kind. You may make it.

A. They include in their tax schedule a considerable amount of re-insurance ceded to unauthorized companies, and that was exactly the basis on which you were making your figures here. The net premiums, that is the premiums less re-insurance in authorized companies and returned pre-[fol. 2557] miums. Consequently I used my corrected pencil figures in the Dubuque Fire & Marine Company. They do a large percentage of their re-insurance in unauthorized companies. That is the reason for the change in that figure.

Q. Now, the figures that you used on the Dubuque Fire & Marine as the amount on which taxes were paid, are those the ink figures or the pencil figures?

A. Pencil figures, as I stated a bit ago.

Q. And are those figures in general larger or smaller than the ink figures appearing on them?

A. They are larger, with the exception of one year.

Q. Do the ink figures as appeared on that Dubuque Fire & Marine return as originally filed, do they correspond with the figures given in evidence in this trial?

A. Really, I don't remember whether they do or not.

Q. Well, those figures, except for one year, are—as given in this trial—are smaller each year than the figures you say they paid taxes on?

A. Yes.

Q. And the comparative figures you have given here are smaller as compared with the figures on which they have paid taxes. Are you able to say whether those ink figures as originally reported to you and the testimony in this case corresponded exactly?

A. No, I couldn't say.

Q. That they do or do not?

A. As I said, I don't remember whether they do or not.

Mr. Folonie: That is all I want to ask him at this time.

[fol. 2558] The Referee:

Q. You spoke of changes having been made in certain of these reports, but I infer from your further answers that you merely mean by that that the figures generally, or perhaps always, written in ink on the reports as originally

made remain on the reports, but in addition you or someone else in your department has put, in pencil or otherwise, other figures on the report; so that the condition of the report as originally filed appears from the report?

A. Yes, sir.

Q. There are no erasures, in other words?

A. No, we make no erasures on them.

By Mr. Barker:

Q. When you make those changes or put those pencil figures on there, do you communicate with the companies and get their authorization?

A. Yes, sir.

Mr. Folonie: We object to giving the contents of those interchanges of correspondence by any conclusion of the witness as not the best evidence.

The Referee: Sustained.

Q. Mr. McGee, have you had occasion to tabulate the total premiums, the total losses and the total expenses of all the stock fire insurance companies doing business in Missouri having filed reports in the office of the Superintendent of Insurance for the years 1917, 1918, 1919, 1920 and 1921, and have you those totals with you?

A. You mean the total business in the United States?

Q. Yes, sir, and of Missouri?

A. Yes, sir.

Q. Confining yourself to Missouri business, give the court the total amount of premiums which the companies report to the department at Jefferson City for the years 1917, [fol. 2559] 1918, 1919, 1920 and 1921.

A. General, let's get clear on that. You mean as they reported it in the underwriting statement, underwriting experience by classes, do you?

Mr. Leahy: Annual report I suppose he means.

The Witness: There is none in that. The only two tabulations of Missouri business I have are from the underwriting report by classes and from the figures that have been filed by the companies in this suit.

Mr. Barker: I want those; just what I want.

A. The totals of Missouri business, from reports of un-

derwriting experience by classes filed with the Insurance Department are: Premiums, $77,897,768; losses, $72,-221,659; expenses, $30,371,234.

Q. Now, you have read into the record the figures as filed with the Department at Jefferson City. Now will you read into the record the total as testified to in this lawsuit?

A. Exhibit of Missouri business, from exhibits of written premiums, losses paid and expenses paid, filed by companies in this suit, show: Total premiums, $83,502,181.

Q. Just a question there. How much excess premiums over and above the premiums which they reported to the department appears?

A. I haven't the figure exactly.

Q. A difference of what?

A. Approximately seven and a half million—or five and a half more millions in the reports filed in this suit over the amount shown in the reports of underwriting experience. [fol. 2560] Q. All right. Now take losses and expenses.

A. Losses paid, $47,057,423.

Q. As shown by what?

A. The exhibits filed in this suit.

Q. And what were the losses as shown in the reports to the Insurance Department—underwriting?

A. $42,221,659.

Q. There is a difference in those two statements?

A. A trifle less than five million.

Q. Now give me the expenses, first as reported to the Department at Missouri, and then as reported in this lawsuit.

Mr. Folonie: Paid, you are talking about now?

Mr. Barker: I don't know. I don't care.

The Witness: Yes, they are paid expenses.

The underwriting experience by classes showed an expense of $30,371,234.

Mr. Barker:

Q. What did it show in this lawsuit?

A. It shows $33,103,634.

Q. Now, have you figured the total difference in all three of the items between the reports as filed at Jefferson City and the testimony in this case—if not, will you do it quickly for me so I may get it in the record?

Mr. Folonie: We object to it as immaterial.
The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. The totals on all three of them.

(Witness makes computations.)

[fol. 2561] A. The total premiums of underwriting—report of underwriting experience by classes are $77,897,768.
The total losses and expenses, $72,592,893.
The underwriting profit would be $5,304,875.
Q. As reported where?
A. In the underwriting reports. All of these figures that I am giving.
Now, then, as taken from the exhibits in this suit, total premiums are $83,502,181.
Total losses and expenses, $80,161,057.
An underwriting profit of $3,341,124; just $1,963,751 less than the profits shown by the reports of underwriting experience by classes.
Q. In other words, from the reports filed with the Insurance Department there appears an underwriting profit of substantially 5 million of dollars, while the testimony as developed in this case for the same length of time shows an underwriting profit of a little over 3 million dollars?
A. $3,341,000.

Mr. Barker: We will adjourn now, if Your Honor please?
The Referee: Shall we adjourn now until two o'clock, gentlemen?
Mr. Folonie: Any time you say.
The Referee: We will adjourn until two o'clock this afternoon, gentlemen.

(Whereupon an adjournment was taken until 2:00 o'clock p. m., of the same day, at which time parties again reconvened at the same place and the following proceedings were had):

[fol. 2562] Monday Afternoon Session, 2:00 o'clock p. m.

The Referee: Proceed, gentlemen.

Mr. Barker: Mr. McGee, will you resume the stand, please?

E. G. McGee was thereupon recalled as a witness for further direct examination on behalf of the defendants and, having been previously duly sworn, was examined and testified as follows:

Direct examination (continued) by Mr. Barker:

Q. Now, Mr. McGee, at the interruption you were showing the different ratios of the companies, and I wish you would go ahead with that just where you left off.

A. Well, with the Federal Insurance Company of New Jersey in 1917 they reported $7,934,000.

Mr. Folonie: What?

A. This is unearned premium reserve. The same that we were on this morning. Department figures, $5,620. 1918, they reported $11,458; department figures, $9,866; 1919, they reported $21,419; department figures, $22,584; 1920, they reported $42,099; department figures $39,090; 1921, they reported $57,551; department figures, $69,643; Fireman's Fund Insurance Company: 1917, $117,701; department figures, $77,419; 1918, they reported $144,329; department figures $113,195; 1919, they reported $164,037; department figures $131,610; 1920, they reported $228,454; department figures, $190,341; 1921, they reported $233,196; department figures, $186,539.

[fol. 2563] Mr. Folonie: Are those figures all as of December 31st of those years you mention?

A. Yes, sir.

Mr. Barker:

Q. The Hanover Fire Insurance Company, New York?

A. 1917, they reported $85,381; department figures, $72,852; 1918, they reported $90,22-; department figures, $109,047; 1920, they reported $134,897; department figures, $134,103; 1921, they reported $129,515; department figures, $130,878.

Q. Now, the Home Insurance Company of New York?

A. In 1917, they reported $556,009; department figures, $697,988; 1918, they reported $611,000; department figures, $730,358; 1919, they reported $664,956; department figures, $861,552; 1920, they reported $841,668; department figures, $1,107,590; 1921, they reported $763,939; department figures, $1,048,073.

The Referee:

Q. Were those reports all based on the same system of reporting?

A. That is a question, Judge.

Q. I mean the various reports made by the company there.

A. They don't give their method, except eleven companies that I have named here this morning. That is the reason we have made these figures here, to see how they run using the method that these companies do.

Q. Were there any changes in the form required by the department?

A. These are not the department reports. These are the figures filed by the companies in this suit.

[fol. 2564] Q. Oh, in the suit?

A. Yes; except, of course, that the total of the unearned premium reserve had to be taken from the annual statements.

The Referee: I see. Proceed.

Mr. Barker:

Q. Insurance Company of North America?

A. Insurance Company of North America, in 1917, reported $313,786; department figures, $147,622; 1918, they reported $404,247; department figures, $238,969.

Mr. Folonie: These are all unearned figures you are still giving?

A. Yes, sir. Same thing. No changes yet. 1919, they reported $574,960; department figures, $401,871; 1920, they reported, $865,821; department figures, $602,476; 1921, they rported $556,618; department figures, $494,001; Marquette National Fire Insurance Company, Illinois: 1917, they reported $17,655; department figures, $17,570; 1918, they reported $21,218; department figures, $21,221. This one runs

almost exactly the same as the company figures. 1919, they reported $36,489; department figures, $36,441; 1920, they reported $49,403; department figures, $49,341; 1921, they reported $44,173; department figures, $44,155.

Mr. Barker: Q. Referring now to Mechanics Insurance Company, Pennsylvania, what about that?

A. Mechanics Insurance Company, Pennsylvania, in 1917 reported $20,549; department figures $27,777; 1918, they reported $21,331; department figures, $35,362; 1919, they reported $26,745; department figures, $42,702; 1920, they reported $27,779; department figures, $50,706; 1921, they re-
[fol. 2565] ported $26,164; department figures, $48,913.

Mr. Barker:

Q. Now take Safeguard, Indiana.

A. In 1917 they reported $10,673; department figures, $12,987; 1918, they reported $5,890; department figures, $7,390; 1919, they reported $7,858; department figures, $9,186; 1920, they reported $24,647; department figures, $27,286; 1921, they reported $53,816; department figures, $61,660.

Q. Referring now to Springfield Fire & Marine Insurance Company?

A. In 1917, they reported $324,455; department figures, $316,507; 1918, they reported $281,990; department figures, $326,303; 1919, they reported $306,500; department figures, $365,971; 1920, they reported $343,33-; department figures, $455,883; 1921, they reported $330,719; department figures, $447,123.

Q. United States Lloyds, Incorporated, New York?

A. In 1917 they reported $10,314; department figures, $57,609; 1918, they reported $12,486; department figures, $6,010. I think there must be an error in setting that figure down there on the 1917 report. I think he has got one figure too many and that should be, as I started to call it first, $5,706.

Mr. Folonie: Do you wish to correct your testimony?

A. 1917, correct that figure to $5,760 instead of $57,609.

Mr. Leahy: What about the rest?

A. 1919, they report $16,078; department figures, $8,070; 1920, they report $16,728; department figures, $8,527; 1921
[fol. 2566] they report $11,089; department figures, $91,100.

Mr. Barker:

Q. Westchester Fire Insurance Company, New York?

A. In 1917, they reported $106,004; department figures, $21,873; In 1918, they reported $98,930; department figures $98,904; 1919, they reported $123,882; department figures $111,576; 1920, they reported $160,390; department figures, $141,101; 1921, they reported $150,492; department figures, $140,349.

Q. Century Insurance Company?

A. In 1917, they reported $2,792; department figures, $3,845; 1918, they reported $1,999; department figures, $2,667; 1919, they reported $2,288; department figures, $3,028; 1920, they reported $2,548; department figures, $3,137; 1921, they reported $2,705; department figures, $3,214.

Q. London & Lancashire?

A. In 1917, they reported $74,978; department figures, $102,379; 1918, they reported $78,221; department figures, $92,987; 1919, they reported $99,376; department figures, $116,287; 1920, they reported $187,429; department figures, $218,135; 1921, they reported $122,619; department figures, $154,279.

Q. London & Scottish Assurance Corporation, Limited?

A. In 1917, they reported $1,677; department figures, $1,677; 1918, they reported $2,077; department figures, $1,485; 1919, they reported $2,423; department figures, $2,465; 1920, they reported $9,547; department figures, $14,379; 1921, they reported $11,316; department figures, $19,764.

[fol. 2567] Q. Northern Assurance Company, Limited?

A. In 1917, they reported $155,069; department figures, $166,076; 1918, they reported $185,118; department figures, $209,764; 1919, they reported $195,306; department figures, $257,773; 1920, they reported $239,639; department figures, $289,357; 1921, they reported $238,963; department figures, $291,384.

Q. Phoenix Assurance Company, Limited?

A. In 1917, they reported $140,868; department figures, $138,474; 1918, they reported $138,398; department figures, $142,657; 1919, they reported $140,453; department figures $135,951; 1920, they reported $146,929; department figures, $165,663; 1921, they reported $143,270; department figures, $141,812.

I think that is enough of them to show the nature of those discrepancies. There are a number of the others that show similar discrepancies.

Mr. Leahy: Move that be stricken out as a mere self-serving statement.

The Referee: Sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Now, Mr. McGee, eleven companies in this lawsuit in filing their statements which have gone into evidence have detailed the method by which they arrived at their figures, have they?

A. Yes, sir.

Q. And you have taken that same method as detailed by the eleven companies and made these calculations which [fol. 2568] you have just read into the record?

A. Had them made, yes, sir.

Q. Now, Mr. McGee, is it important in knowing the activities of a fire insurance company with reference to the department determining rates to know the unearned premium basis at the beginning of the period?

A. The companies think it is. I don't think so.

Q. That is their basis of calculation?

A. Their basis of calculation, and on that basis it is necessary that they have them.

Q. If you figure on their basis then the unearned premium figure at the beginning of the period is the real basis of figuring, is it not?

A. Yes, sir; that is the starting point.

Q. And if that figure is wrong all conclusions reached afterwards would be wrong?

A. Not necessarily all of them, but they would on the first year of the period would me wrong.

Q. Well, let us assume that a company with 8 million dollars of unearned premiums at the beginning of 1917 should report 15 million dollars of unearned premiums at the beginning of 1917. Would that affect the calculations through the entire period?

A. As a total, yes.

Q. It would not reflect the true condition at the end of the period, would it?

A. No, sir.

Q. Now, Mr. McGee, have you had occasion to investigate the report of the companies with reference to their incurred losses?

A. I have looked over them. I have made no attempt to make a definite check of them.

[fol. 2569] Q. Why?

A. Because it is an impossibility. There is nothing to check by or check against.

Q. What do you mean by that?

A. I mean that the losses are not reported in such shape that we could make any check against those, the figures they submitted, that would amount to anything.

Q. What errors, if any, have you noted as shown by their figures in this lawsuit?

A. In running through the figures as submitted I have noted some errors there in the incurred losses; first in the Columbia Insurance Company of New Jersey. It is necessary that you have the unpaid losses for 1916 and for each year thereafter during the period. Also that you have reinsurance recoverable on unpaid losses for 1916 and also for the five year period. In the Columbia figures here for 1916, instead of having the figures for unpaid losses he writes in "not available." 1917, he does the same thing, says, "figures are not available." 1918 and 1919 and '20 and '21, he has those figures. The re-insurance recoverable is the same condition, 1916 and 1917 figures re-insurance recoverable, he says "not available." Neither does he give any re-insurance recoverable in 1919, but he does in 1920 and 1921. The correct incurred losses cannot be obtained without those figures.

Mr. Folonie: Is that the Columbia Insurance Company?

A. Yes, sir, of New Jersey.

Mr. Barker:

Q. The Eagle Star & British Dominions?

A. The Eagle Star & British Dominions, England, sub-

[fol. 2570] mitted some figures along in the summer some time and on the 15th of September they forwarded cor-

rected figures. These are the corrected figures that I have here. They fail to give the unpaid losses, the reinsurance recoverable in 1916, which were necessary to getting correct figures of incurred losses for 1917. London & Lancashire Fire Insurance Company of England failed to give any reinsurance recoverable, although their annual statement shows they had re-insurance recoverable each year of the period. Marine Insurance Company, Limited, England, does not seem to give any incurred losses at all. They give the paid losses, they give the unpaid losses, omitted the year 1916; re-insurance recoverable, and they say the figures are not available. And leave some gaps in that way.

Mr. Leahy: Move that the last declaration be stricken out.
The Referee: Overruled.

The Witness: National Fire Insurance Company of France gives the net losses paid, instead of unpaid losses for the State of Missouri. Strikes out the word "unpaid" and writes in the words "net incurred," but under the head of "re-insurance recoverable" he says that these figures are not available; which would leave the incurred losses incorrect. Just let me say right here that probably sixty per cent or at least fifty per cent of the companies in making net loss reports, reported them in just that way. They did not follow the blank which you furnished them. They gave their paid losses, and then instead of giving the other [fol. 2571] two, the unpaid losses in the State of Missouri and re-insurance recoverable, struck out the word "unpaid" and inserted "net incurred" and gave their incurred losses there. So there is no possible way to go over the calculations of them at all. The Phœnix Fire and Union Fire are both in the same office as the National and figures are given in exactly the same way. The Union Marine of London, they may know how they figure it. I don't. In 1917, under the head of "net losses paid" in the State of Missouri, he has in red ink $1,118, which would indicate that he had recovered enough re-insurance to amount to $1,118 more than his losses actually paid; and in 1918, in his paid losses——

Mr. Folonie (interrupting): Couldn't that be salvage, Mr. McGee?

A. Well, it might be salvage or re-insurance, either one, but they both should be included in any figures of incurred losses; re-insurance and salvage should both come out.

The Referee: Pardon me, how could the re-insurance amount to more than the company had paid out in a given year?

A. Well, I couldn't explain just how it could, but it does happen; I know from the report. I don't know just how it does unless that is what the figures mean.

Mr. Folonie: May I ask one question right here? Doesn't it often happen that in marine losses, they pay the loss and the vessel considered as a loss, and then be salvaged afterwards, and they get a rebate in the subsequent year?

[fol. 2572] A. That may be, Mr. Folonie; I am not familiar with the marine business at all, or the methods of handling that.

Mr. Folonie:

Q. Well, haven't you found those things usually happen with marine companies rather than the fire companies?

A. No, I don't know that I have noticed that. You have one company there that I recall just now, the Reliance of Pennsylvania. One year there they report their premiums in red ink, of six or seven thousand dollars, if I remember right. He doesn't change his heading here—gives this as unpaid losses; and for 1916 he says the figures are not available and under the head of "re-insurance recoverable" he says the figures for 1916 and 1917 are not available, and it appears from the summary over here that he has used the figures given under the heading of "unpaid losses" in the State of Missouri as his incurred losses. But this red ink figure up here in this "paid losses" column—well, it needs explanation anyway.

Mr. Barker: Are you through with those now?

A. Yes, sir.

Q. Now, Mr. McGee, when a company reporting in this lawsuit fails to include their losses in 1916, it is impossible to get the figures for those five years experience, is it not?

A. It is impossible to get the incurred losses correctly, yes, sir.

Q. And your examination has not been sufficient or really has been sufficient to show you that you couldn't check them on account of the failures you have noted?

[fol. 2573] A. There is no way to check the losses that I know of, to get anywhere with it.

The Referee: Pardon me. You mean no way to check them on the reports presented or no way at all to check them?

A. I have never found any way at all, judge; that will give any satisfaction as a check.

Mr. Barker:

Q. Now; then, Mr. McGee, have you had occasion to observe in your investigation of the figures submitted in this lawsuit the amount paid by the company to the different bureaus?

A. Yes, sir.

Q. Will you call attention to that for me, please, and examine and show those payments?

A. I have a few of those separately—the inspection payments and then there are a few more in some companies here that have their expenses itemized that seemed to me just as odd. In explaining one claim that I will use here, I will say that the figures were taken from the books of the Missouri Inspection Bureau and are the amounts paid by these companies during the years 1917, 1918, 1919, 1920 and 1921 to the Missouri Inspection Bureau. These charges, the amount of them, is based on the premium. If I am correctly advised of the net rate premiums of the company; and as far as I have been able to check out to get at an average on it, the total payments covering the inspection charges for Missouri would be equal to about one——

Mr. Polonie (interrupting): Just a minute. We object to putting that figure in evidence; predicated on books or supposed examination of books of Missouri Inspection Bu- [fol. 2574] reau not shown to have been made by this witness and not any instrument in evidence, and objected to as testifying respecting it as not the best evidence and incompetent.

Mr. Barker: The Missouri——

Mr. Folonie (interrupting): May I ask him one question? Did you examine the books of the Missouri Inspection Bureau, Mr. McGee?

A. I did not.

Mr. Folonie: Q. Were you present when the examination was made?

A. I was not.

Mr. Folonie: Q. That company is in St. Louis, is it not?

A. Yes, sir.

Mr. Folonie: Q. Were you present in St. Louis when the inspection was under way?

A. I was not.

Mr. Folonie: We renew our objection.

Mr. Barker: Mr. McGee, I withdraw that. I don't care for these preliminary statements. Can you show me the amount which the companies reported to the state as being paid to the bureau and then the amount which they actually paid?

A. The companies make no report to us of what they pay to the bureau.

Q. What do they pay the bureau for?

A. For inspection service in the State of Missouri.

Q. That is recognized by the Missouri rating law and allowed?

A. Yes, sir.

Q. The testimony in this case shows that the Missouri Rating Bureau—Inspection Bureau is supported by the companies—you understand that?

A. Yes, sir.

[fol. 2575] Q. It is the companies itself?

Mr. Folonie: We object as calling for a conclusion on that, if the court please; calling for a legal conclusion.

The Referee: Sustained.

Mr. Barker:

Q. Well, what figures have you on that, Mr. McGee? How do you get them?

A. The examination and tabulation of those figures was made by Mr. Allen.

Q. Of the Insurance Department?

A. Of the Insurance Department; at the direction of Mr. Hyde.

Q. And the report made to the Insurance Department?

A. Yes, sir.

Q. And you are using that report?

A. I used the tabulation as he made it for the five years.

Mr. Barker: Well, there is no objection to that, is there?

Mr. Folonie: Certainly there is; same objection I made before.

Mr. Barker: Do you want Mr. Allen here to testify to it? We will get him here for you on cross——

Mr. Folonie: We insist on the objection.

The Referee: What is the objection?

Mr. Folonie: The objection is that this is not any instrument created by the plaintiffs or by which they are in any wise bound and because the verity of the same is in no wise established, and that it is secondary.

The Referee: Hasn't the evidence in this case heretofore disclosed, Mr. Folonie, that the Rating Bureau is maintained by these plaintiff companies?

Mr. Barker: It has.

[fol. 2576] Mr. Folonie: Well, the law prescribes what it is, of course. There is a statute on it and I think that answers it better than any conclusion of mine, probably.

The Referee: What is the statute?

Mr. Folonie: Oh, it provides in substance that a rating—the company shall subscribe to a rating bureau, or create one, or subscribe to one, which shall have in charge the question of rating of towns and cities and publishing the rates and it is subject to visitation by the insurance department. It is an organization independent of the insurance companies to which under the law they are required to subscribe.

The Referee: Who employs the personnel who discharges whatever duties devolves upon that bureau?

Mr. Folonie: I don't know that I can tell you. I don't know. I assume that it is probably initiated by the insurance companies with the approval of the Insurance Department. As *far* as my knowledge goes, which is not very broad on the subject.

The Witness: Insurance Department has nothing to say about it.

Mr. Barker: Let me ask one question.

Q. These figures which you have are filed in the office of the Insurance Department of Missouri?

A. Yes, sir.

Q. And they were made by an official examiner of the department?

A. Yes, sir.

Q. Under the authority of the law allowing the examination to be made?

A. Yes, sir.

Mr. Folonie: Object to his stating his conclusion as to it being made under authority of law.

[fol. 2577] The Referee: If the statute governs the matter, the court will take judicial notice of what it is.

Mr. Barker:

Q. Now, you are simply testifying to the figures which are on file in the department?

A. Yes.

Q. And which were filed there by the examiner, acting under the direction of the department?

A. Yes, sir.

Mr. Barker: I think they are competent without bringing Mr. Allen here.

Mr. Folonie: We don't think it is any official record in any legal sense in that it is any record required to be kept in that office like the annual reports or other things. It is more or less an examination into private affairs like they might go and examine books.

Mr. Barker: The commissioner could testify to the result of an examination of any clerk in the office.

The Referee: It seems to me on the border line but the objection is overruled.

Mr. Folonie: Exception.

Mr. Barker: We will put Mr. Allen and Mr. Terry, the manager of the department, on and connect that up if there is any doubt about it. Now, go ahead, Mr. McGee.

A. In 1917 the American Central of St. Louis paid the Inspection Bureau $3246. In their Missouri expenses as filed in this suit, they charge $2425. In 1918 they paid to the Inspection Bureau $3254; charged to Missouri as a direct payment in this suit, $3524. In 1919 they paid to the Inspection Bureau $4297 and charged as Missouri expenses [fol. 2578] $3885. In 1920 they paid to the Missouri Inspection Bureau $3169 and charged Missouri with $6164. In 1921 they paid to the Bureau $5294 and charged to Missouri $10,111. Commercial Union Fire, New York, in 1917 paid the Bureau——

Mr. Folonie (interrupting): So we will not be led into confusion on this, may I ask the witness one question just to clarify this subject as he goes along, for the court?

Mr. Barker: Yes, sir.

Mr. Folonie:

Q. Mr. McGee, there is no segregation in any of the exhibits filed in this case of Missouri Inspection Bureau expenses as distinguished from the total bureau expenses of any company—American Central or any other, is there?

A. No, sir.

Mr. Barker: Go ahead now, Mr. McGee.

The Witness: Commercial Union Fire, New York, in 1917, paid the bureau $302 and charged Missouri $484.

Mr. Folonie: Now, I think we will object to pursuing this, if the court please. The witness is undertaking to contrast payments made to a specified bureau as he says in fact as shown by their examination with the total charges to bureaus of all kinds made, in the evidence herein in one group, and such comparison if made does not lead to any logical and proper conclusion and we object to pursuing the comparison.

Mr. Barker: Let me ask a question on that.

Q. Explain to the court, Mr. McGee, how you are able to reach the conclusions you have given.

[fol. 2579] A. I attempted to do that a little bit ago and Mr. Folonie objected very seriously.

Mr. Barker: Yes, but he has withdrawn his objection now.

Mr. Folonie: I haven't withdrawn any objection.

A. We know perfectly well that the amount paid to the Missouri Inspection Bureau does not represent the total amount of inspection service that may be charged in Missouri expenses, but as I said a while ago these payments are based on a premium income and practically all of these companies—the premium income as shown by the payments to the bureau increased all the way through. The payment to other bureaus was made on the same basis, so that the amounts charged should run somewhere in close proportion to the amounts which are paid to the Missouri Inspection Bureau; and the very fact that they do not—some times they are less, some times they are three and even four times as large—indicates—well, Mr. Folonie will be kicking, and so I will leave the court to draw his own inference as to what it indicates.

Mr. Leahy: I move that be stricken out, Your Honor; move it be stricken out; reflection or compliment on Mr. Golonie.: Improper argument at this time, and counsel reserves that right.

The Referee: I think that point is well taken; may be improper argument.

Mr. Barker:

Q. Mr. McGee, you get those figures from figuring the percentage on premiums which are paid the Inspection Bureau?

[fol. 2581] Mr. Folonie: No, he hasn't said that.

The Witness: I said that the amounts paid to the Inspection Bureau were based on the premium income.

Mr. Barker: That is right.

A. (Continuing:) And if I was correctly advised, were based on the direct or net direct premiums.

The Referee: Let's see if I get your point there. The amounts to which you have been testifying are the amounts which you paid to the Missouri Inspection Bureau?

A. First, yes.

Mr. Folonie: The first figure?

The Referee: Yes. Then there are other expenses which may properly be charged under the same heading, that is, inspection?

A. Yes, national boards, national underwriting boards, and things of that sort.

Mr. Folonie: Inspection by the individual company, too.

The Referee:

Q. And are those other expenses paid to the national boards and expenses of inspection paid by individual companies calculated on the same basis as the expenses paid or the amounts paid to the Missouri Inspection Bureau?

The Witness: The individual inspection, I think, may be counted practially nil. The payments to the national boards are on the same basis as the other—on the basis of the company's business.

The Referee: And whatever deduction is to be drawn from the fact your testimony is to show that the calculation [fol. 2581] on the amounts paid to the Missouri Inspection Bureau and on the amounts paid to the National Inspection Bureau are not in harmony.

A. That is the thing, exactly.

The Referee: Proceed.

The Witness: That they are not—the charge is made as the Missouri expenses are disproportionate. That is all. You will find some of them run below and some of them above.

Mr. Barker: Now, go ahead.

The Witness (resuming exhibit): In 1918 they paid to the Bureau $353 and charged Missouri $705. In 1919, they paid the Bureau $480 and charged Missouri $989. In 1920, they paid the Bureau $443 and charged Missouri $1,625. In 1921, they paid the Bureau $770 and charged Missouri $1,289.

The Referee: Are those two amounts which you have last given the amounts respectively actually paid to the Missouri Bureau and the amounts charged as if the last named amount had been paid?

A. They charge it in their expenses shown here filed in this suit. That is the amount they charge as a direct payment.

Mr. Folonie: To the Missouri Inspection Bureau?

A. No, sir, for inspection and surveys.

Mr. Hogsett: Well, then they are not comparable items.

The Witness: They are, absolutely.

Mr. Hogsett: Let's see. The figure which you say Mr. Allen got from his examination of the books of the com-[fol. 2582] pany—of the Bureau at St. Louis are contributions or payments direct to that Bureau alone, is that right?

A. Exactly.

Q. Now, in the figures offered in evidence, here, you have stated that the item of inspections includes not only payments to the Missouri Inspection Bureau but other items of expense as well, is that correct?

A. National boards, yes, sir.

Mr. Hogsett:

Q. Very well. Now, then, you are undertaking to say that because Mr. Allen's figure obtained from St. Louis showing payments to that Bureau alone do not compare with the aggregate inspection expense that the two items are comparable and that, therefore, they are not in harmony?

A. I am not exactly saying that, but something like that. I am saying that the payments to the national board are figured on the same basis as the payment to the Missouri Inspection Bureau and both are based on premium income of the company. And naturally, under those conditions, if the payments to the Bureau increases the total payment should increase in a like proportion. If it decreased, it should decrease in like proportion. I am showing this comparison here to show that it does not do anything of the sort. That in many instances the total inspection charge runs below the amount actually paid to the Inspection Bureau in Missouri alone. Other times it runs two, three and four times the amount paid to the Missouri Inspection Bureau when it ought to run not to exceed one and a half or one and three fourths times the amount paid the Missouri Inspection Bureau.

[fol. 2583] Mr. Hogsett: Q. In the instance where the amount shown in evidence in this case runs in excess, two or three or four times in excess of the amount paid to the Missouri Inspection Bureau, do you undertake to say or do you know what that excess represents?

A. I know that it is intended to represent.

Mr. Hogsett: Q. No. Do you know what it represents? Do you know what the fact is?

A. I will just admit that I don't know what a whole lot of these figures you have put in here represent—and I don't think the companies, either.

Mr. Hogsett: Q. Well, to answer that question you don't know what the excess represents, do you?

A. I said I do not.

Mr. Folonie: Q. Do you know that the companies pay for the maintenance of the St. Joseph Fire Prevention Bureau on a flat rate?

A. That is not included in this.

Mr. Folonie: Q. Not included in what?

A. Those taxes, fees and fire prevention, and fire department, are included under the head of taxes.

Mr. Folonie: Q. Taxes?

A. Taxes and fees.

Mr. Folonie: Q. Don't you know that those are included in these figures under "expense of bureaus?"

A. I don't so understand it at all.

Mr. Folonie: Q. And the St. Louis Fire Prevention Bureau don't include fees on a flat basis?

A. I do not.

Mr. Folonie: Q. Do you know how much it amounts to with the American Central?

A. I do not.

[fol. 2584] Mr. Folonie:

Q. Can you say that it is not in their computation of bureau and like expenses as they have tabulated it in this case?

A. Did you notice the American Central figures as I read them?

Mr. Folonie:

Q. I am asking you whether you know whether they are in there or not.

A. I do not. I am not offering any comments on those figures at all.

Mr. Hogsett: I submit the objection is well taken; that the two classes of items which the witness has undertaken

to compare are not comparable at all on the showing of his own testimony.

(Discussion ensues.)

Mr. Barker: Now, if they would prefer that we get it through the Missouri Inspection Bureau, we can do that.

Mr. Folonie: The American Central for five years as we have got their figures here, they slightly exceed by a small amount the amount as he says they show on the Inspection Bureau books—exceed that for the five years by a few thousand dollars in the amount charged as expense in this case and in one year the amount goes less and the next year it goes more, and whether they paid the bill on the first of January and perhaps on the one set of books it appears in December and the other in January and thrown in one year or the other doesn't make any difference in this lawsuit. There is no discrepancy over the whole period which is worth even our spending the time to make this objection on.

The Referee: The evidence offered might have some probative value as tending to show inaccuracy or incor-[fol. 2585] rectness of certain evidence offered in behalf of the plaintiffs. Objection overruled.

Mr. Barker: That is the only purpose for it. Now, go ahead Mr. McGee.

The Witness: Connecticut Fire: 1917, report, paid to Bureau $1841 and charges Missouri $2237. In 1918, paid Bureau $1982 and charges Missouri $4092. In 1919, paid the Bureau $3020 and charges Missouri $5344. In 1920, paid Bureau $3249, charges Missouri with $7000. In 1921, paid Bureau $3865, charges Missouri $6961. Dubuque Fire and Marine: In 1917 paid Bureau $489, charged to Missouri $497. In 1918, paid Bureau $589, charged Missouri $1139. In 1919, paid Bureau $764, charged Missouri $1437. In 1920, paid Bureau $911, charged Missouri $1228. In 1921, paid Bureau $1068, charged Missouri $2101. Firemen's Fund: In 1917, paid Bureau $1186, charged Missouri $1413. '18, paid Bureau $1468, charged to Missouri $4583. '19, paid Bureau $2132, charged Missouri $2,132. '20, paid Bureau $3658, charged Missouri $4700. '21, paid Bureau $3815, charged Missouri $7954. Glenn Falls: In '17 paid Bureau $970, charged Missouri $1,355. '18, paid

Bureau $978, charged Missouri $2889. '19, paid Bureau $1231, charged Missouri $1957. '20, paid Bureau $709, charged Missouri $1125. '21, paid Bureau $4062, charged Missouri $2062. Globe-Rutgers: '17, paid Bureau $703, charged Missouri $1046. '18, paid Bureau $678, charged Missouri $1986. '19, paid Bureau $944, charged Missouri $863. '20, paid Bureau $725, charged Missouri $3031. '21, [fol. 2586] paid Bureau $2,065, charged Missouri $3614. Insurance Company, State of Pennsylvania: '17, paid Bureau $742, charged Missouri $1624. '18, paid Bureau $760, charged Missouri $1880. '19, paid Bureau $861, charged Missouri $2,100. '20, paid Bureau $1298, charged Missouri $1622. '21, paid Bureau $1273, charged Missouri $1999. Marquette National: In '17, paid Bureau $280, charged Missouri $330. '18, paid Bureau $354, charged Missouri $1774. '19, paid Bureau $582, charged Missouri $1037. '20, paid Bureau $761, charged Missouri $1101. '21, paid Bureau $903, charged Missouri $1236. Milwaukee Mechanics: In '17, paid Bureau $1230, charged Missouri $1881. '18, paid Bureau $1365, charged Missouri $2071. '19, paid Bureau $1774, charged Missouri $4,454. '20, paid Bureau $2333, charged Missouri $4367. '21, paid Bureau $2869, charged Missouri $4145. Newark Fire: '17, paid Bureau $381, charged Missouri $1,228. '18, paid Bureau $446, charged Missouri $790. '19 paid Bureau $546, charged Missouri $1131. '20, paid Bureau $703, charged Missouri $1225. '21, paid Bureau $763, charged Missouri $1933. Niagara Fire Insurance Company: '17, paid Bureau $1791, charged Missouri $2372. '18, paid Bureau $1969, charged Missouri $4629. '19, paid Bureau $2260, charged Missouri $6022. '20, paid Bureau $3939, charged Missouri $5,467. '21, paid Bureau $3985, charged Missouri $5728. Phoenix Insurance Company of Hartford: '17, paid Bureau $2519, charged Missouri $3469. '18, paid Bureau $2253, charged Missouri $5754. '19, paid Bureau [fol. 2587] $2705, charged Missouri $4351. '20, paid Bureau $4,625, charged Missouri $5620. '21, paid Bureau $4448, charged Missouri $9372. Globe Fire & Marine Insurance Company: In '17, paid Bureau $1771, charged Missouri $2347. '18, paid Bureau $1242, charged Missouri $3419. '19, paid Bureau $2185, charged Missouri $5303. '20, paid Bureau $2725, charged Missouri $6,570. '21, paid Bureau $4060, charged Missouri $5531. Security Insur-

ance Company: '17, paid Bureau $799, charged Missouri $1824. '18, paid Bureau $1077, charged Missouri $3159. '19, paid Bureau $1605, charged Missouri $2633. '20, paid Bureau $2209, charged Missouri nothing. '21, paid Bureau $2581, charged Missouri $2,204. North British & Mercantile Insurance Company: In '17, paid Bureau $1508, charged Missouri $1353. '18, paid Bureau $1700, charged Missouri $2949. '18, paid Bureau $1502, charged Missouri $3779. '20, paid Bureau $2331, charged Missouri $2233. '21, paid Bureau $1884, charged Missouri $2422. Sun Insurance Office: In '17, paid Inspection Bureau, $1172, charged Missouri $2781. '18, paid Bureau $1395, charged Missouri $4,481. '19, paid Bureau $1823, charged Missouri $5036. '20, paid Bureau $2282, charged Missouri $6071. '21, paid Bureau $2688, charged Missouri $6564. That is enough, I think, to show what we are driving at.

The Referee: Gentlemen, how would it suit you to take a five-minute recess?

(Which was accordingly done.)

Mr. Barker:

Q. Now, Mr. McGee, I call your attention to the expenses reported by these insurance companies in this lawsuit and [fol. 2588] ask you if you have had occasion to examine them?

Mr. Leahy: That is since the——

The Referee (interrupting): Do you mean to inquire there as to expenses incurred since the end of the five-year period in question?

Mr. Leahy: That is what I understood the General to ask about—in this lawsuit, he said.

Mr. Barker: No, he is just talking now. Read the question.

(Question read by the reporter.)

The Referee: The companies in the lawsuit, it says.

Mr. Leahy: I see.

Mr. Barker: Reports as filed in this particular lawsuit—and I haven't got the reports in front of me. You have examined them, though, haven't you, Mr. McGee?

A. Yes, sir.

Q. They filed copies of them with you?

A. They gave us copies as we went along.

Q. I am not speaking about any expense today but just the expense which they reported in their side of this lawsuit before they closed; have you had occasion to examine their reports?

A. I have.

Q. What have you found with reference to them? Take a few cases for me right quick.

A. Well, take the American Alliance, for instance, in 1917 their expense ratio report in this state is 54.56. The average expense of the company in the United States dur- [fol. 2589] ing that year was 35.44. In their Missouri expense I notice that they charged against commissions at the rate of 43.2 per cent.

Mr. Folonie: How much?

A. 43.2 per cent.

Their annual statement does not show that they paid anything at all for inspections and surveys, but as a matter of fact they did pay to the Missouri Inspection Bureau $476.49. And they charged in this expense here $227; apportioned items they only have $7,768.

Mr. Folonie: What year is that?

A. '17. And the Missouri business is 3.13 per cent, yet they apportioned us $529.

The Referee:

Q. Did you calculate what per cent that would be?

A. No, I didn't but it is just about double. Correct proportion would give $243. In 1918, the figures reported in this suit, the expense ratio is 66.22; the average expense of the company that year was 37.61. They charged 49.3 per cent agents' commission. The same thing is true in regard to inspection and surveys as in '17. The annual statement does not show anything paid for that, but they paid to the Missouri Inspection Bureau $567.80, and charged Missouri with $9973. The apportionment is again high. The amount to be apportioned is $17,269, and the Missouri business is exactly the same proportion that it was before, 3.13. They apportion 872 while we couldn't make but 540 out of it. In 1919 their expense ratio is 77.56.

Mr. Barker:

Q. In Missouri?

[fol. 2590] A. In the figures reported in this suit. Their average expense was 37.23. That year they charge us with agents' commissions, 56.6 per cent.

The Referee:

Q. Per cent of what?

A. That is that per cent of their premiums.

The inspection charge is like the other years; the annual statement shows nothing. They paid Missouri Inspection Bureau $973.18 and charged Missouri expense with $2,012.

The total amount of the apportioned items was $15,681 and they have apportioned to Missouri $2,351, or 15 per cent of it. Whereas the Missouri business was 3.7 per cent of the whole. In 1920——

Mr. Folonie (interrupting): When you use the word "annual" statement in these answers, are you using it in the sense that you used it before, that is, the annual statement filed with the state?

A. Yes, yes, that is the annual statement filed with the state.

Mr. Folonie: But you said that they made no report of inspection expenses?

A. Show nothing charged in the annual statement.

Mr. Folonie: Q. No place in the annual statement report for that expense, is there?

A. Yes, sir. I am talking about the total charge of all state. They show no payment in any state for it.

1920 the expense ratio as reported in this suit is 95 per cent and the average expense of the company was 37.78 per cent. They charge us with agents' commissions and even 80 per cent.

[fol. 2591] Inspection Bureau, the annual statement shows that they did not pay any at all, but they did pay to the Missouri Inspection Bureau $1,328.90 and charged Missouri $1,419.

The apportioned items total $16,019, of which they apportion to Missouri $1,559 or nearly ten per cent, whereas for their Missouri business of 3.65 per cent of the total in 1921 their expense ratio shown in this suit was 61.72. Their

average expense throughout the United States was 36.25. They charge us this year with only 41.2 per cent agents' commissions. Inspections, same as the other years, nothing shown in the annual statement at all but they did pay the Missouri Inspection Bureau $1,979, and charged Missouri $3,490. The apportionment is exactly correct for one year.

The American Eagle Fire Insurance Company of New York, their expense ratio as reported in this suit was 33.74. Their average expense was 22.46. Their agents' commissions were practically nothing on their general business. They reinsured so much of their business that the total commissions paid by the company on $528,789 of business was $30,780, or a trifle less than six per cent. They have charged Missouri about 18 per cent, which was about three times the commission on the general business.

Their taxes is an under charge. They charge nearly enough to cover the two per cent premium tax paid in Missouri. They show $338 on $16,225 premiums. Should be about $130 or $75 more than that.

In their apportioned items the total of items to be apportioned is $41,370 and 3.4 per cent of that runs $1,406, whereas they have apportioned $1,845.

{fol. 2592} In 1898 their expense ratio as reported in this state was 55.01 per cent. Their average expense was 26.49 per cent.

Mr. Folonie: You say average expense, you mean through the United States?

A. Yes.

Mr. Folonie:

Q. Because more than twice as much in Missouri according to that?

A. Yes, the way they gave it. They reinsure a large part of their business which cuts down their commissions and that accounts for their low average expense ratio. Their average commissions this year were 16 per cent. They charge Missouri with about 20 per cent.

The Referee: What year is that?

A. This is 1918.

Mr. Folonie:

Q. How much was that?

A. About 18 or 19 per cent. I haven't figured it exactly. Their apportionment this year is extremely high. Their Missouri business is 2.24 of their total business. The amount of the apportioned items is $80,378, and they have apportioned us $4724. Whereas it ought to be $1800. They paid to the Missouri Inspection Bureau that year $635 and they charged Missouri with $1,709.

They paid taxes on $18,000 of premiums and charged Missouri with $1,725 taxes; which is almost nine per cent taxes.

In 1919 their expense as reported in this suit is 41.82 per cent. Their average expense is 29.99 per cent.

Their apportionment is again almost double what it should be. The apportionment items amount to $124,235. [fol. 2593] The Missouri business is 2.55 per cent of their total and they have apportioned on that $6418, or a trifle over five per cent instead of 2.55 per cent.

Taxes they have again charged pretty high, paying on $33,720 of business and they have charged $2474 or between seven and eight per cent.

In 1920 their ratio as reported in this suit is 42.35. Their average expense ratio was 31.70. They have charged us this time again about their average rate of commissions.

Taxes are rather high; charge us $2600 on $59,000 business; between five and six per cent. The apportioned items amount to $174,945. Missouri business is 2.88 per cent, and they apportion us $8635, whereas the proper proportion would run just a trifle over $5,000.

In 1921 their expense report in this suit is 72.17. Their average expense is 32.23. This year they have reinsured even a larger amount than they did in '17 and on $3,259,867 of business their actual commissions paid were $127,245, or only about four per cent. They have charged Missouri with about 17 or 18 per cent commission.

The Referee: What does that mean, agents' commission?

A. Yes, sir.

Their annual commission payments cut down by reinsurance was reduced down to about four per cent. $127,000 on three million and a quarter of business.

Their apportionment this year runs only a little above the correct amount. The items to be apportioned are $493,967

and the Missouri business is 4.3 per cent of the total. They [fol. 2594] have apportioned us $23,430, where it should be $21,245.

Assurance Company of America runs rather close to its average expense except for one year. It is within one or two per cent of it each year, first one way and then the other, until we get to 1920. The ratios reported in this suit—as reported in this suit is 44.49 and their average is 36.17. The difference is due largely to the apportioned items.

The Missouri business is 8.12 of the total business. The items to be apportioned amount to $28,108; correct amount would be $4302, whereas they have apportioned us $4685; and on 15 or 16 per cent instead of 8 per cent.

Mr. Folonie:

Q. What year was this?

A. That was 1920.

In 1921 their expense ratio reported in this suit is 65.55 and the average expense ratio was 38.88. That is very largely an apportionment, too. The Missouri business was 3.2 per cent of the total business. Total amount of the apportioned items was $27,857. Correct apportionment would give $891. But they have apportioned us $4324.

This is the Boston Insurance Company. In 1917 in this suit they reported an expense ratio of 46.46. Their average expense was 28.13.

The difference is largely in commissions. Their average net commission was 15.1.2 per cent and they charged Missouri 32.93.

[fol. 2595] Their business was .8% of one per cent of the total. Items to be apportioned were $472,308. They apportioned us $5275, which is about seven or eight hundred dollars too high.

In 1918 they report in this suit 38.67 per cent; average expense was 31.34 per cent. The difference is mainly in commissions again. The average commission paid was 19.6 and they charged Missouri with 30 per cent commission.

On taxes they make an undercharge. They are paying taxes on $68,703 of premiums and they charge $1132.61, which is not enough to cover the premium tax alone.

Mr. Folonie: If I am not disturbing your trend of thought, Mr. McGee, what is your idea of giving the average expense

through the United States, and then the Missouri expense, and contrasting it? What is the idea in your mind there?

A. Well, it would seem to me that the Missouri expense might reasonably run slightly higher than the average expense, but when it comes to running 40 or 50 per cent, I don't hardly think it did.

Mr. Folonie: I just want to get your idea.

The Witness: I can see some reason for a slight difference because of the excess commissions paid in the City of St. Louis, for one thing, and in an individual case there is another thing that makes a difference, and that is the field supervisory expense. I have noticed in checking this expense that that frequently makes a difference of two or three per cent in the expense ratio. Now you can readily see why that might be. It works both ways. Some companies have no supervision in Missouri; some companies [fol. 2596] where they do a comparatively small business have a man that devotes his time to Missouri. In that case the supervision expense would run above the average.

Mr. Folonie: I think you have answered my question temporarily. I just wanted to see if you had something in mind that I didn't think of, that is all.

The Witness: It was just to give an idea of the general expense of the company as a comparison with the expense charged in Missouri was all and that that difference should not be so extreme as it is in some of these companies.

The Referee:

Q. Generally speaking, Mr. McGee, would the expense of doing business tend to decrease in proportion to the amount of business done as the amount of business done rises in volume?

A. It doesn't seem to, Judge. That expense keeps right up with the procession. If you will notice this volume of business is increasing over this five-year period, and you note also that the expense of these companies in nearly all cases is increasing about the same rate or a little faster than the volume of business is.

Mr. Folonie: I think perhaps the commissioner's idea was whether the company with a large volume of business was likely to have a lower expense ratio than one with a small volume of business.

A. Well, there doesn't seem to be but very little difference. Now, this is a company that has a low expense ratio and it has a very good volume of business; but take the Hartford and the Home that write the largest volume of business of any companies that we have, the expense ratio [fol. 2597] of both those companies ran considerably above this one that we have here now, the Boston; and their premium income runs perhaps two and a half to three times as large.

The Referee: Proceed.

Mr. Folonie:

Q. Doesn't the extent to which they reinsure affect the net cost of the business, too?

A. Well, I would naturally suppose it would, Mr. Folonie, but I never took that up and made any calculation of it. I couldn't say definitely.

Mr. Barker: Proceed now.

The Witness: In 1919 they report in this suit an expense ratio of 40.61; average expense is 36.66. The Missouri commission charge is a trifle above the average there, the average being 19.8 per cent. The Missouri commission about 21; or perhaps a little over 21. Their apportionment is about $1,000 short of mine. The business was 2.02 of the total and there is $762,887——

Mr. Folonie (interrupting): What is that per cent again, please?

A. 2.02. The apportionment on that would give $15,400 and they apportion $14,062. In 1920 they reported in this suit 72.41 per cent expense; the average expense is 39.47. What little difference there is there is the difference in commissions and difference in apportionment between us this time is only—well, it is about $1,200. Theirs being about $1,200 higher than my figures.

[fol. 2598] Mr. Folonie: That is twice they made mistakes in your favor, isn't it?

A. They do it once in a while.

Q. You exonerate us from design in this particular case at least, I suppose?

A. Yes, I think in those particular instances, I think the General will clear you.

Mr. Folonie: I want the court to hear this. It shows that we have honest moments, if the court please.

The Witness: Now——

Mr. Barker: No, it is a very studied effect not to make it too extreme.

The Witness: Well, here is one that I do not feel like exonerating anybody on. It is home folks and they ought to know better.

Mr. Barker: What is it?

A. Citizens Insurance Company of St. Louis. They charge us with everything nearly and their annual statement don't show that they have paid anything for a good many of these charges anywhere. For instance, they charge us with a trifle over $3,900 for field supervision expenses. Their annual statement don't show that they paid a cent for field supervision in Missouri or anywhere else.

Mr. Folonie: Q. Now, which one do you think is right, Mr. McGee?

A. I think the annual statement is.

Mr. Folonie: Q. You don't think they paid anything?

A. No.

Mr. Barker: They only charged us with $5,000, that is a small charge, Mr. McGee, anyway. Just go ahead with it. [fol. 2599] A. On postage and telegraph they did pay $27.51, according to the annual statement on all their business and they charge Missouri with $14.56 of it. That is a good liberal division.

Mr. Folonie:

Q. Home office is in this state, isn't it?

A. (Continuing:) And their miscellaneous expense, their annual statement don't show they paid anything under that heading, but they kindly tax up $4,000 of miscellaneous expense to Missouri. They are very kind on apportionment. They apportion only $77 and I made it $82. In 1918 their annual statement shows the same payments that it did in 1917 and it shows that they paid for the adjustment of all their losses in the United States $1,549.96. They say they paid $1,650.37 for adjustment of losses in Missouri. Their annual statement don't show they paid anything for field supervision expense anywhere, but they charge up $4,500 for field supervision.

Mr. Hogsett: Is it reasonable to suppose that that company didn't have any field supervision at all?

A. Yes, sir.

Mr. Hogsett: It is?

A. Yes, sir.

Mr. Hogsett: And didn't have any miscellaneous expense at all?

A. Yes, sir.

Mr. Hogsett: You say that is reasonable to suppose?

A. Yes, sir.

Mr. Folonie: It is all bookkeeping under the management of the Hartford Insurance Company and just a question of separating it between the two?

[fol. 2030] A. They don't separate it. The Hartford charges it all up as Citizens expense and the Citizens charge it all up as Missouri expense. That is the reason I say it is entirely reasonable that those charges should not be in their expense.

Mr. Barker: He said, is it reasonable to suppose that they would have no field supervision expense. Is it reasonable to suppose that they would make no report to the State Department of field supervision expense and then when they come to try this lawsuit, discover that they had $4,500 expense?

A. I don't think so. Another thing, Mr. Hogsett, I would say at least 25 per cent of the companies doing business in Missouri that have no field supervision expense in Missouri except perhaps a little bit of traveling expense for executive officers who dodge in and out of the state occasionally. They have no men employed here who supervise Missouri business. Consequently this Missouri expense account would show no field supervision expense. That is not unusual at all. And as to the miscellaneous expense, I would say that at least fifty per cent of the companies, at least a part of the time during this five-year period show no miscellaneous expense in their annual statements.

Mr. Hogsett: Do you happen to know that the Citizens Company does have a field man in Missouri?

A. I don't know whether it does or not, but if it does and employed by the Citizens Insurance Company, it certainly should appear in their annual statement in their disbursements—if they paid him anything for it. If there is no

[fol. 2601] disbursement for it, they have no right in the world to put it in their Missouri expense for the purpose of this suit.

Mr. Hogsett: I move to strike out that statement.

Mr. Barker: That is answering your question.

Mr. Hogsett: He said he didn't know and then when he got through with that he answered the question. I now move to strike out the statement last made.

The Witness: In 1919 the total that they paid for loss adjustment in the United States was $2,041, and they charge a little over half of it to Missouri, $1,135. They again charge us with $3,900 for field supervision and they again charge us with $3,625 of miscellaneous items, and the annual statement shows that they paid neither of those. In 1920 they paid $2,696 for loss adjustments and charged Missouri with $759 of it. They charge us $3,800 for field supervision again; $3,470 miscellaneous items. Again in 1921 they are very generous on commissions with us this time. They paid a total commission on all their business of $26,083 according to their annual statement. They paid $19,600 of that in Missouri. They charge us with $5,374 for field supervision for which the annual statement shows that they only paid $18,000 in the whole United States. First time, by the way, that their annual statement has shown any payment for it at all. And they charge us with $3,600 of miscellaneous items, but this time they do have charged up under the head of miscellaneous for conflagration protection $9,429.

Mr. Barker: Now take your next one.

[fol. 2602] A. This is the Continental of New York. Their expense as reported in this state differs very little from their average expense over the country. But we have heard a good deal about the misleading blanks. This expense blank used by the companies here is a beautiful illustration of that kind of a blank and the Continental has tried to follow it. There are a good many items there——

Mr. Polonie (interrupting): Don't be harsh with us, Mr. McGee.

A. (Continuing:) That it is almost impossible to set out direct payments for. Under your head of actual payments. And the Continental has itemized their expenses clear down

the line there and in order to do that they have had to wobble some items to make it come out where it ought to.

Mr. Folonie: What was that verb?

A. "Wobble."

Cutting out some of those items up there and making the apportionment—the proportions like the majority of the companies do, the apportionment increased enough over this to bring it up about where it should be—is what I mean. And make a very slight difference in the total cost. I merely checked that through to see how that itemizing did work out. That was about all to the Continental expense.

Mr. Folonie: Came out about right?

A. Their total expense, as I said at first, runs very nearly their average expense; very little difference. Franklin Fire Insurance Company of Philadelphia. Their ex- [fol. 2003] pense report in this suit for '17 is 30.41. Their average expense was 31.05. You see, they have gotten below their average expense there. They are very kind to us in the matter of commis- ns; their average commission was 27 per cent and they have charged Missouri with only about 22, and even it up down here when it came to the apportionment—most of it. The apportioned items are $32,993 and their Missouri business is 5.6 per cent of the total. They apportioned $2,232 where it should be $1,800. They also charge us a rather liberal tax, they charge us $1,340 on $32,000 of premiums. They are again low in 1918. That is very largely in the commissions again. They may have insured a greater percentage of Missouri business than they did all their business, I don't know about that, but at any rate they charge us only about 20 per cent commission, or a trifle less than 20, while the average commission is about like it was a year before, about 27 per cent. But the apportioned items amount to $47,499 and their Missouri business was 7.31 of the total business, which would give us about $3,340, while they apportioned us $4,531. In 1919 the same thing, their expense ratio reported in this suit is 32.93, their average expense 34.11. They have again charged Missouri with a commission considerably below their average and made an apportionment about $1,200 over. In 1920 they reported in this suit an expense ratio of 28.21; average expense runs 34.54; most of the difference again in commissions, but they also fall short on their ap-

[fol. 2604] portionment this time. Their apportionment runs a trifle over $5,000 while they have apportioned only $1,945.

Mr. Folonie: Another one of those giving you the best of it to cover our iniquity.

A. I am showing you both sides of it, Mr. Folonie. I am showing you where they go astray both ways. If it was all one way we would know their figures were not dependable. Now, the Insurance Company of North America——

Mr. Folonie (interrupting): You stopped with 1920 with them, did you intend to or not?

A. Wait a minute, I will see about it. This is almost a duplication of 1920. Their expenses shown in this suit is or were 30.8, and their average is 36.42, and the differences are in commissions and apportionments just as they were in 1920. Apportionment is too low and the commissions are below the average that they paid. Insurance Company of North America. In 1917 in this suit reported an expense ratio of 44.28. Their average expense was 29.37. Their average commissions were a little less than 20 per cent, 19.6 to be exact about it. They have charged Missouri with about 26 per cent. The apportioned items amount to $1,085,816 and the Missouri business is 1.49 of the total business, giving an apportionment of $16,179, and they apportion us $24,443. In 1918 expense report in this suit 37.59, average expense 36.61; not much difference again. They again charge us a high commission, about three and a half per cent higher than their average commission, but when it comes to the apportioned items there is $1,648,762 to be [fol. 2605] apportioned. The Missouri business is 2.08 of the total and gives the apportionment of $34,294 and they apportion $30,772, which nearly balances the overcharge in commission.

Mr. Folonie: Another one of those mistakes in your favor to cover up our iniquity.

The Witness: In 1919 the expense was almost the same as the average expense. Expense in this suit, 39.45; average 38.65. So it is in 1920. Reported in this suit 36.99 and average 36.58. And in 1921 reported in this suit 43.1; average 42.61. Here is another one. National Fire Insurance Company of Hartford. The total of those expenses runs almost exactly the same all the way through as the

average expense, but I would just like to call your attention to some of the items that go to make it. In 1917 the ratio in this suit was 39.13; average expense was 37.57. Very little difference, you will note. Now, they paid to the Missouri Inspection Bureau that year $3,435 and, as I said this morning, a reasonable charge there would be one and a half times that amount which would give them a little over $5,000. They charge us inspection expenses $4,591. Taxes they are paying on $280,000 of premiums and they put the taxes at $8,853, which is probably some five to eight hundred dollars short on that. When it comes to the apportionment down here they even that up. The total of the apportioned items was $572,977, and the Missouri business is 3.15 of the total, which gives us an apportionment of a little [fol. 2686] over $18,000, and they apportion $26,000. And it runs about that way through the three years; reverse it occasionally.

The Referee: Do you discover there, Mr. McGee, any fixed or settled method of determining what the apportioned expense should be?

A. I don't know whether the companies have or not, Judge. There is no way in the world to tell how they apportion these things; but the only way that I can get at it that I can see is to take the ratio of the Missouri business to the total business on those apportioned items, and that is the method that we have used in going over these.

The Referee:

Q. Was that the method used in reaching the figures given in respect to this company?

A. Yes, sir.

The Referee: Used by the company?

A. On their apportioned items. The figures that I used for my proportion was the premiums—the total premiums from the annual statement and the Missouri premiums as reported in this suit.

Mr. Folonie:

Q. You haven't given any apportioned item on the National Fire Insurance Company at all, have you?

A. I think I did on that first year, Mr. Folonie. Didn't I, Mr. Reporter?